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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 34

LABOR AND INDUSTRIAL RELATIONS

Chap.

CHAPTER 1

GENERAL PROVISIONS

Sec.

34-1-1. Redesignated.

Reserved by Ga. L. 2012, p. 1144, § 7/SB 446, effective May 2, 2012.

Editor's notes. — Ga. L. 2012, p. 1144, § 6/SB 446, effective May 2, 2012, redesignated former Code Section 34-1-1 as present Code Section 25-15-110.

34-1-3. Discrimination against employee for attending a judicial proceeding in response to a court order or process; exception to applicability of Code section.

JUDICIAL DECISIONS

Employer failed to comply with statute. — Attendance rules in an employer's handbook did not comply with O.C.G.A. § 34-1-3 because the rules stated somewhat confusingly that an employee was only protected for work absences due to a court required appearance, which was defined as: an employee was not a named party in the proceedings, and an employee was accompanying a minor child or stepchild who has been subpoenaed to testify as a witness; the statute's protection is not limited to employees accompanying a minor child subpoenaed to testify. Thomas v. HL-A Co., 313 Ga. App. 94, 720 S.E.2d 648 (2011).

Sufficient evidence of retaliation. — Trial court erred in granting a former employer's motion for summary judgment in a former employee's action alleging that the employer improperly terminated the employee in violation of O.C.G.A. § 34-1-3(a) for attending a juvenile court proceeding because the employee presented competent circumstantial evidence from which a jury could infer that the employee was fired in retaliation for arguing to management that the employee was statutorily entitled to be excused since the employee was attending court pursuant to a witness subpoena; the employer failed to come forward with competent evidence showing a proper reason for the termination, and the subpoena commanding the employee to appear in court was facially valid. Thomas v. HL-A Co., 313 Ga. App. 94, 720 S.E.2d 648 (2011).

Cited in In re Hadaway, 290 Ga. App. 453, 659 S.E.2d 863 (2008).

34-1-7. Definitions; application for temporary restraining order and injunction; requirements; hearing; notice and service; notification of law enforcement agencies.

Law reviews. — For article, "Georgia's 'Bring Your Gun to Work' Law May Not Have the Firepower to Trouble Georgia Employers After All," see 14 (No. 7) Ga. St. B.J. 12 (2009).

34-1-8. Veterans' preference employment policy; use not a violation.

(a) As used in this Code section, the term:

(1) "Employer" means any person engaged in business and having one or more employees, but does not include the federal government, state, or any political subdivision of the state.

(2) "Veteran" means an individual who served on active duty in the armed forces of the United States and was honorably discharged from such service.

(3) "Veterans' preference employment policy" means any employer's policy of preference in hiring, promoting, or retaining a veteran over any other qualified applicant or employee.

(b) Any employer may create and use a veterans' preference employment policy, which shall be in writing and applied uniformly to

employment decisions regarding hiring, promotion, or retention during a reduction in force.

(c) An employer's use of a veterans' preference employment policy as provided for in this Code section shall not constitute a violation of any local or state equal employment opportunity law. (Code 1981, § 34-1-8, enacted by Ga. L. 2015, p. 620, § 2/HB 443.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 620, § 1/HB 443, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Voluntary Veterans' Preference Employment Policy Act."

CHAPTER 2

DEPARTMENT OF LABOR

Sec.
34-2-6. Specific powers and duties of Commissioner.

34-2-6. Specific powers and duties of Commissioner.

(a) In addition to such other duties and powers as may be conferred upon him by law, the Commissioner of Labor shall have the power, jurisdiction, and authority:

(1) To superintend the enforcement of all labor laws in the State of Georgia, the enforcement of which is not otherwise specifically provided for, and all rules and regulations made pursuant to this title;

(2) To make or cause to be made all necessary inspections in order to see that all laws and the rules made pursuant thereto which the department has the duty, power, and authority to enforce are promptly and effectively carried out;

(3) To make investigations, collect and compile statistical information, and report upon the conditions of labor generally and upon all matters relating to the enforcement and effect of this chapter and of the rules issued thereunder;

(4) To make and promulgate such rules or changes in rules as he may deem advisable for the prevention of accidents or the prevention of industrial or occupational diseases in every employment or place of employment, and such rules or changes in rules for the construction, repair, and maintenance of places of employment, places of public assembly, and public buildings as he may deem advisable, to render

them safe. The Commissioner may appoint committees composed of employers, employees, and experts to suggest rules or changes therein;

(5) To do all in his power to promote the voluntary arbitration, mediation, and conciliation of disputes between employers and employees and to avoid strikes, picketing, lockouts, boycotts, blacklisting, discriminations, and legal proceedings in matters of employment. In pursuance of this duty, the Commissioner may appoint temporary boards of arbitration, provide necessary expenses of such boards, order reasonable compensation not exceeding $15.00 per day for each member engaged in such arbitration, prescribe rules for such arbitration boards, conduct investigations and hearings, publish in print or electronically reports and advertisements, and do all things convenient and necessary to accomplish the purpose of this chapter. The Commissioner may designate a mediator and may, from time to time, detail employees or persons not in the department to act as his assistants for the purpose of executing such provisions. Employees of the Department of Labor shall act on temporary boards without extra compensation. Nothing in this Code section or in this chapter shall be construed to prohibit or limit in any way employees' rights to bargain collectively;

(6) To supervise the business of private employment agencies and employment intelligence bureaus and as frequently as may be necessary to examine into the condition of each such agency or bureau;

(7) To exercise jurisdiction over such person, firm, or corporation acting as an emigrant agent or agency, hereinafter referred to as emigrant agent. As used in this paragraph, the term "emigrant agent" means any person who shall solicit or attempt to procure labor in this state to be employed beyond the limits of this state. The Commissioner shall require each emigrant agent to make application for license to do business, such application to be endorsed by two taxpayers and accompanied by a bond of $1,000.00 for the faithful performance of duty and the payment of such tax as may be required by law; each emigrant agent must secure annually a license to do business. Each emigrant agent shall make a daily report to the Commissioner showing the names, addresses, and number of persons carried out of the state, the points to which they have been carried, the nature and character of work secured for them, the pay to be received by them, and the fee charged them or to be collected and from whom. The emigrant agent shall show clearly by whom employed, if paid a salary, or from whom he receives a commission, and how much. The Commissioner shall inspect the office and work of each emigrant agent as often as may be necessary; and if any

emigrant agent shall be found to be violating the law it shall be the duty of the Commissioner immediately to proceed to have such person presented to the proper authorities for prosecution and to cancel the license to do business;

(8) To post or have posted at his discretion in a conspicuous place in all state employment agencies throughout the state, the "Help Wanted" advertisements from the Sunday editions of the two newspapers with the largest circulation in each of the cities of Detroit, Michigan; Chicago, Illinois; St. Louis, Missouri; New York, New York; Pittsburgh, Pennsylvania; Baltimore, Maryland; Washington, D.C.; Los Angeles, California; and San Francisco, California, so that persons making application for employment through such agencies, but unable to find employment in this state, may see what employment is available elsewhere. It shall be the further duty of the Commissioner of Labor to assist, in any way possible, any person making application for employment in the securing of a position in some other state if employment is not available in Georgia for such a person; and

(9) To initiate and continue to operate an ongoing educational assistance program to include high school through graduate levels for qualified Department of Labor personnel.

(b) Upon a formal determination that a debt or obligation of a former employer who is no longer in business in the State of Georgia to the Department of Labor of $300.00 or less is uncollectable, or that the costs of collection would equal or exceed the amount due such department, the Commissioner of Labor shall execute and transmit to the state accounting officer a certification which includes the following: a recapitulation of the efforts made to collect the debt or obligation; an estimate of the costs to pursue collection of the debt or obligation administratively or judicially; such other information as may be required by the procedure developed by the Commissioner of Labor and that complies with policies prescribed by the state accounting officer; and a statement that further collection effort would be detrimental to the financial interests of the state. The certification shall be made under oath or affirmation and shall be sent to the state accounting officer at such times as shall be prescribed in the procedure developed by the Commissioner of Labor and the state accounting officer. Upon receipt of the certification, the state accounting officer shall be authorized to approve the removal of such uncollectable amounts from the financial records of the Department of Labor. (Ga. L. 1911, p. 133, §§ 2, 5; Ga. L. 1917, p. 88, § 1; Ga. L. 1920, p. 118, §§ 1, 2; Ga. L. 1931, p. 7, § 108; Code 1933, § 54-110; Ga. L. 1937, p. 230, § 9; Ga. L. 1945, p. 487, § 1; Ga. L. 1950, p. 9, § 3; Ga. L. 1958, p. 380, § 1; Ga. L. 1959, p. 283, § 7; Ga. L. 1974, p. 567, § 20; Ga. L. 1992, p. 1029, § 1; Ga. L. 2005, p. 694, § 32/HB 293; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the second sentence of paragraph (a)(5).

34-2-10. Employer's duty with respect to provision of safe employment generally.

Law reviews. — For annual survey on insurance law, see 64 Mercer L. Rev. 151 (2012).

JUDICIAL DECISIONS

Employer not responsible for an employee's suicide. — Trial court properly granted summary judgment to an employer because the evidence failed to show that the employer was responsible for creating a situation which led to an employee's suicide; therefore, the employer had no duty to make a reasonable effort to render aide for the employee's emotional well-being and avoid any further harm. When a regional manager for the employer went to the office where the employee worked to investigate fictitious loans which were discovered in an audit, the employee, who was alleged to have participated in the loans, talked to the manager about the situation, asked if the employee could step outside to smoke a cigarette and make a phone call, left the premises, drove home, and committed suicide. McCrary v. Middle Ga. Mgmt. Servs., 315 Ga. App. 247, 726 S.E.2d 740 (2012).

CHAPTER 5

SEX DISCRIMINATION IN EMPLOYMENT

Law reviews. — For comment, "Blurred Lines: Sexual Orientation and Gender Nonconformity in Title VII," see 64 Emory L.J. 911 (2015).

CHAPTER 6

LABOR ORGANIZATIONS AND LABOR RELATIONS

Article 2

Membership in Labor Organizations

Sec.

ARTICLE 1

GENERAL PROVISIONS

34-6-2. Use of force or threats to compel continuance in or departure from employment.

RESEARCH REFERENCES

ALR. — Increase, or promise of increase or withholding of increase, of wages as unfair labor practice under state labor relations acts, 34 ALR6th 327.

34-6-6. Use of force or threats to compel or prevent labor organization membership or to compel or prevent strike participation.

RESEARCH REFERENCES

ALR. — Increase, or promise of increase or withholding of increase, of wages as unfair labor practice under state labor relations acts, 34 ALR6th 327.

ARTICLE 2

MEMBERSHIP IN LABOR ORGANIZATIONS

34-6-20. Definitions.

As used in this article, the term:

(1) "Employee" includes any employee and shall not be limited to the employees of a particular employer.

(2) "Employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, a state or any political subdivision thereof, any person subject to the Railway Labor Act, as amended, any person employed by a transit authority subject to the provisions and requirements of Section 13(c) of the Federal Transit Act, 49 U.S.C. Section 5333(b), any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) "Employment" means employment by an employer.

(4) "Federal labor laws" means the National Labor Relations Act and the Labor Management Relations Act, as amended by federal administrative regulations relating to labor and management or employee and employer issues, and the United States Constitution as amended and as construed by the federal courts.

(5) "Governmental body" means the State of Georgia or any local government or its subdivisions, including but not limited to cities, municipalities, counties, and any public body, agency, board, commission or other governmental, quasi-governmental, or quasi-public body, or like capacity of local government or its subdivision.

(6) "Labor organization" means any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (Ga. L. 1947, p. 616, § 1; Ga. L. 2013, p. 623, § 1/HB 361.)

The 2013 amendment, effective July 1, 2013, inserted "any person employed by a transit authority subject to the provisions and requirements of Section 13(c) of the Federal Transit Act, 49 U.S.C. Section 5333(b)," in the middle of paragraph (2); added paragraphs (4) and (5); and redesignated former paragraph (4) as present paragraph (6).

Editor's notes. — Ga. L. 2013, p. 623, § 6/HB 361, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 191 (2013).

34-6-20.1. Statement of rights under federal law.

The rights protected under federal labor laws include, but are not limited to:

(1) An employer's or employee's right to express views in favor of or contrary to unionization and any other labor relations issues to the full extent allowed by the First Amendment of the United States Constitution and Section 8(c) of the National Labor Relations Act;

(2) An employee's right to participate in, and an employer's right to demand, a secret ballot election under federal law, including, without limitation, the full procedural protections afforded by such laws for defining the unit, conducting the election campaign and election, and making any challenges or objections thereto; and

(3) An employer's right to:

(A) Oppose the recognition of a labor organization based solely on reviewing authorization cards absent a secret ballot election conducted in accordance with federal labor laws;

(B) Refuse to release sensitive and private employee information beyond the requirements of federal labor laws;

(C) Maintain the confidentiality of employee information to the maximum extent allowed by federal labor laws; and

(D) Restrict access to its property or business to the maximum extent allowed by federal labor laws. (Code 1981, § 34-6-20.1, enacted by Ga. L. 2013, p. 623, § 2/HB 361.)

Effective date. — This Code section became effective July 1, 2013.

Editor's notes. — Ga. L. 2013, p. 623, § 6/HB 361, not codified by the General Assembly, provides for severability.

U.S. Code. — Section 8(c) of the National Labor Relations Act, referred to in this Code section, is codified as 29 U.S.C. § 158(c).

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 191 (2013).

34-6-21. Membership in or resignation from labor organization as condition of employment or continuation of employment; application of federal law.

(a) No individual shall be required as a condition of employment or continuance of employment to be or remain a member or an affiliate of a labor organization or to resign from or to refrain from membership in or affiliation with a labor organization.

(b) No governmental body may pass any law, ordinance, or regulation or impose any contractual, zoning, permitting, licensing, or other condition that requires any employer or employee to waive statutory rights under federal labor laws.

(c) No governmental body may pass any law, ordinance, or regulation that would require, in whole or in part, an employer or multiple employer association to accept or otherwise agree to any provisions that are mandatory or nonmandatory subjects of collective bargaining under federal labor laws, including, but not limited to, any limitations on an employer's or multiple employer association's right to engage in collective bargaining with a labor organization, to lock out employees, or to operate during a work stoppage; provided, however, that the foregoing shall not invalidate or otherwise restrict the application of federal labor laws.

(d) No employer or labor organization shall be forced to enter into any agreement, contract, understanding, or practice, written or oral, implied or expressed, that subverts the established process by which employees may make informed and free decisions regarding representation and collective bargaining rights provided for by federal labor laws. (Ga. L. 1947, p. 616, § 2; Ga. L. 2013, p. 623, § 3/HB 361.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); and added subsections (b) through (d).

Editor's notes. — Ga. L. 2013, p. 623, § 6/HB 361, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 191 (2013).

JUDICIAL DECISIONS

No private right of action. — Because O.C.G.A. § 34-6-21 did not provide a private remedy and was only a statement of public policy by the State of Georgia, plaintiff temporary Mexican farm workers' claim that the defendant employer discriminated against union members in recruiting and hiring the workers in violation of O.C.G.A. § 34-6-21 failed. Ramos-Barrientos v. Bland, No. 606CV089, 2010 U.S. Dist. LEXIS 22921 (S.D. Ga. Mar. 12, 2010).

Claim of Mexican farm workers rejected. — Nothing showed defendant employer was directly involved in removing union workers from a preferred worker list; thus, a breach of contract claim filed by plaintiff temporary Mexican farm workers, premised on an immigration conveyance order's promise to comply with all employment-related law, which included O.C.G.A. § 34-6-21, failed. Ramos-Barrientos v. Bland, No. 606CV089, 2010 U.S. Dist. LEXIS 22921 (S.D. Ga. Mar. 12, 2010).

34-6-22. Payment to labor organization of fee or assessment as condition of employment.

JUDICIAL DECISIONS

No violation of statute. — When a union operated a hiring hall where both members and nonmembers could obtain referrals for temporary work, the union's charging of a referral fee did not violate O.C.G.A. § 34-6-22. The payment of the fee was not a condition of employment, and in the wake of a settlement before the National Labor Relations Board, the union charged members and nonmembers the same fee. Perry v. Int'l Longshoremen Ass'n Local No. 1414, 295 Ga. App. 799, 673 S.E.2d 302 (2009).

34-6-25. Deductions from employees' earnings of fees of labor organizations; exceptions.

(a) No employer shall deduct from the wages or other earnings of any employee any fee, assessment, or other sum of money whatsoever to be held for or to be paid over to a labor organization except on the written authorization of the employee. Such authorization may be revoked at any time at the request of the employee.

(b) Nothing in this Code section shall be construed to impair any contract, agreement, or collective bargaining agreement in existence prior to July 1, 2013.

(c) This Code section shall not apply to any collective bargaining agreement entered into pursuant to the Railway Labor Act, as amended, or to any professional association whose membership is exclusively composed of educators, law enforcement officers, or firefighters not engaged or engaging in contracting or collective bargaining. (Ga. L. 1947, p. 616, § 6; Ga. L. 2013, p. 623, § 4/HB 361.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); in subsection (a), substituted "written authorization of the employee" for "individual order or request of the employee,

which shall not be irrevocable for a period of more than one year" and added the second sentence; and added subsections (b) and (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "to July 1, 2013" was substituted for "to the effective date of this Code section" at the end of subsection (b).

Editor's notes. — Ga. L. 2013, p. 623, § 6/HB 361, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 191 (2013).

34-6-26. Contracts allowing deductions from employees' earnings of fees of labor organizations.

(a) It shall be unlawful for any employer to contract with any labor organization and for any labor organization to contract with any employer for the deduction of any fee, assessment, or other sum of money whatsoever from the wages or other earnings of an employee to be held for or to be paid over to a labor organization except upon the condition to be embodied in such contract that such deduction will be made only on the written authorization of the employee. Such authorization may be revoked at any time at the request of the employee.

(b) Nothing in this Code section shall be construed to impair any contract, agreement, or collective bargaining agreement in existence prior to July 1, 2013. (Ga. L. 1947, p. 616, § 7; Ga. L. 2013, p. 623, § 5/HB 361.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); in subsection (a), in the first sentence, substituted "such contract" for "said contract" near the middle and substituted "written authorization of the employee" for "individual order or request of the employee, which shall not be irrevocable for a period of more than one year" at the end, and added the second sentence; and added subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "to July 1, 2013" was substituted for "to the effective date of this Code section" at the end of subsection (b).

Editor's notes. — Ga. L. 2013, p. 623, § 6/HB 361, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 191 (2013).

CHAPTER 6A

EQUAL EMPLOYMENT FOR PERSONS WITH DISABILITIES

Sec.
34-6A-2. Definitions.

34-6A-2. Definitions.

As used in this chapter, the term:

(1) "Disability" means any condition or characteristic that renders a person an individual with disabilities but shall not include addiction to any drug or illegal or federally controlled substance nor addiction to the use of alcohol.

(2) "Employer" means a person or governmental unit or officer in this state having in his, her, or its employ 15 or more individuals or any person acting as an agent of an employer.

(3) "Individual with disabilities" means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities and who has a record of such impairment. The term "individual with disabilities" shall not include any person who is addicted to the use of any drug or illegal or federally controlled substance nor addiction to the use of alcohol.

(4) "Labor organization" means an organization of any kind; agents of such organization; an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment; or a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(5) "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(6) "Persons" means one or more individuals, partnerships, this state, municipalities or other political subdivisions within the state, associations, labor organizations, or corporations.

(7) "Physical or mental impairment" means:

(A) Any physiological disorder or condition or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or

(B) Intellectual disabilities and specific learning disabilities.

(8) "Substantially limits" means that the impairment so affects a person as to create a likelihood that such person will experience

difficulty in securing, retaining, or advancing in employment because of a disability.

(9) "Unfair employment practice" means an act that is prohibited under this chapter. (Code 1933, § 66-502, enacted by Ga. L. 1981, p. 1803, § 2; Ga. L. 1982, p. 3, § 34; Ga. L. 1995, p. 1302, § 4; Ga. L. 2015, p. 385, § 4-16/HB 252.)

The 2015 amendment, effective July 1, 2015, substituted "Intellectual disabilities" for "Mental retardation" at the beginning of subparagraph (7)(B).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Ga. L. 2015, p. 385, § 4-16/HB 252, purported to amend this Code section by substituting "mental retardation" for "intellectual disabilities"; however, "intellectual" was capitalized due to appearing at the beginning of subparagraph (7)(B).

CHAPTER 7

MASTER AND SERVANT

Article 1
General Provisions

ARTICLE 1

GENERAL PROVISIONS

34-7-1. Determination of term of employment; manner of termination of indefinite hiring.

Law reviews. — For survey article on labor and employment law, see 59 Mercer L. Rev. 233 (2007). For survey article on labor and employment law, see 60 Mercer L. Rev. 217 (2008). For annual survey of labor and employment law, see 61 Mercer L. Rev. 213 (2009). For article, "The Public Policy Exception to Employment At-Will: Time to Retire a Noble Warrior?," see 61 Mercer L. Rev. 551 (2010). For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010). For annual survey on labor and employment law, see 64 Mercer L. Rev. 173 (2012). For article, "Employment Discrimination," see 64 Mercer L. Rev. 891 (2013). For annual survey on labor and employment law, see 65 Mercer L. Rev. 157 (2013). For annual survey on labor and employment law, see 66 Mercer L. Rev. 121 (2014).

JUDICIAL DECISIONS

ANALYSIS

DISCHARGE

2. Illustrative Cases

Discharge

2. Illustrative Cases

Employment terminable at will.

City employee was an at-will employee because the record did not show that the employee was hired for a definite term of employment, and the city's personnel policies and practices were legally insufficient to create an implied contract for a definite term of employment. Goddard v. City of Albany, 285 Ga. 882, 684 S.E.2d 635 (2009).

In a former employer's suit to enforce noncompetition and nonsolicitation clauses, summary judgment was properly granted in favor of the employer on a former employee's wrongful termination claim; as an at-will employee, pursuant to O.C.G.A. § 34-7-1, the employee had no claim for wrongful termination. H&R Block Eastern Enters. v. Morris, 606 F.3d 1285 (11th Cir. 2010).

34-7-2. Payment of wages by lawful money, checks, or credit transfer; selection of payment dates by employer.

(a) As used in this Code section, the term "payroll card account" means an account that is directly or indirectly established through a person, firm, or corporation employing wageworkers or other employees and to which electronic fund transfers of the wages or salary of such employees are made on a recurring basis, whether the account is operated or managed by such person, firm, or corporation or a third-party payroll processor, a depository institution, or any other person.

(b) Every person, firm, or corporation, including steam and electric railroads, but not including farming, sawmill, and turpentine industries, employing skilled or unskilled wageworkers in manual, mechanical, or clerical labor, including all employees except officials, superintendents, or other heads or subheads of departments who may be employed by the month or year at stipulated salaries, shall make wage and salary payments to such employees or to their authorized representatives (1) by lawful money of the United States, (2) by check, (3) with the consent of the employee, by authorization of electronic credit transfer to his or her account with a bank, trust company, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States, or (4) by credit to a payroll card account. Such payments shall be made on such dates during the month as may be decided upon by such person, firm, or corporation; provided, however, that the dates so selected shall be such that the month will be divided into at least two equal periods; and provided, further, that the payments made on each such date shall in every case correspond to the full net amount of wages or earnings due the employees for the period for which the payment is made.

(c) A person, firm, or corporation that elects pursuant to subsection (b) of this Code section to make wage and salary payments by using

credit to a payroll card account shall provide the employee with each of the following:

(1) A written explanation of any fees associated with the payroll card account offered to the employee. For all employees employed on the date a person, firm, or corporation elects to make such wage and salary payments by using credit to a payroll card account, such written explanation shall be provided at least 30 days prior to the date such payroll card account is to become available. For any employee hired after the date of such election, the written explanation shall be provided at the time of hiring. A form shall be provided simultaneously with the written explanation of fees allowing employees to opt out of receiving such payments as credit to a payroll card account as provided in paragraphs (2) and (3) of this subsection. Such form shall also be made generally available to employees;

(2) The ability to opt out of receiving such payments as credit to a payroll card account by submitting in writing a request for a check; and

(3) The ability to opt out of receiving such payments as credit to a payroll card account by providing the proper designation and authorization for an electronic credit transfer. (Ga. L. 1919, p. 388, § 1; Code 1933, § 66-102; Ga. L. 1973, p. 672, § 1; Ga. L. 1982, p. 3, § 34; Ga. L. 1984, p. 22, § 34; Ga. L. 2015, p. 596, § 1/SB 88.)

The 2015 amendment, effective May 5, 2015, designated the existing provisions of this Code section as subsection (b); added subsections (a) and (c); and, in the middle of the first sentence of subsection (b), substituted "subheads of departments" for "subheads of department", deleted "or" following "(2) by check", substituted "authorization of electronic credit transfer to his or her account" for "authorization of credit transfer to his account", and, at the end of the first sentence, added ", or (4) by credit to a payroll card account."

Law reviews. — For article, "Georgia's 'Bring Your Gun to Work' Law May Not Have the Firepower to Trouble Georgia Employers After All," see 14 (No. 7) Ga. St. B.J. 12 (2009).

ARTICLE 2

EMPLOYER'S LIABILITY FOR INJURIES GENERALLY

Cross references. — Protection of employees from improperly designed or erected scaffolding, staging, or other mechanical device, § 25-15-110.

Law reviews. — For annual survey on labor and employment law, see 66 Mercer L. Rev. 121 (2014).

JUDICIAL DECISIONS

Limitation of benefits to dependents constitutional. — Because the Workers' Compensation Act's, O.C.G.A. § 34-9-1 et seq., differing treatment of dependent and non-dependent heirs is not irrational and serves the legitimate gov-

ernment purpose of workers' compensation, the Act's limitation on recovery by non-dependent heirs does not violate the due process or equal protection rights guaranteed by the United States Constitution. Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

34-7-20. Care by employer in selection of employees and in furnishing of safe machinery; employer's duty to warn.

Law reviews. — For survey article on labor and employment law, see 59 Mercer L. Rev. 233 (2007). For survey article on labor and employment law, see 60 Mercer L. Rev. 217 (2008). For annual survey of labor and employment law, see 61 Mercer L. Rev. 213 (2009). For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010). For annual survey on labor and employment law, see 64 Mercer L. Rev. 173 (2012). For annual survey on labor and employment law, see 65 Mercer L. Rev. 157 (2013). For annual survey on labor and employment law, see 66 Mercer L. Rev. 121 (2014).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Negligent hiring and retention claim.

Because an employee's discrimination and retaliation claims against an employer failed on summary judgment, the derivative claim of negligent retention under O.C.G.A. § 34-7-20 also could not be sustained. Ekokotu v. Boyle, 2008 U.S. App. LEXIS 20308 (11th Cir. Sept. 24, 2008) (Unpublished).

Plaintiff former employee's negligent retention claim against defendant former employer failed because it was derivative of the meritless harassment claims, which had failed under the subjective prong of the analysis as the conduct was relatively infrequent with only a few dozen comments or actions over 11 months, and rude and boorish behavior fell short of describing severe and pervasive harassment. Guthrie v. Waffle House, Inc., No. 10-15090, 2012 U.S. App. LEXIS 2256 (11th Cir. Feb. 3, 2012) (Unpublished).

Action for damages against employer.

Where a fast-food restaurant cashier struck a customer, then got into a fight with the customer, customer's premises liability claim against the restaurant failed; restaurant did not have knowledge that the cashier would engage in such conduct because the cashier had indicated in a job application that the cashier had not been convicted of a felony, and during three months that the cashier worked at the restaurant prior to the altercation, there was no evidence that the cashier ever argued with, much less struck, customers. Dowdell v. Krystal Co., 291 Ga. App. 469, 662 S.E.2d 150 (2008), cert. denied, 2008 Ga. LEXIS 787 (Ga. 2008).

Cited in McCrary v. Middle Ga. Mgmt. Servs., 315 Ga. App. 247, 726 S.E.2d 740 (2012); Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Selection of Employees

Employer's degree of care.

Because the screening protocols used by the defendant hospital and the hospital's officials in hiring a substance abuse counselor sufficiently satisfied the standard of care for hiring under O.C.G.A. § 34-7-20 in that an outside firms' criminal background check revealed no criminal activity, a drug screen showed no evidence of drug use, and no negative information was received upon attempts to contact prior employers, a claim of negligent hiring by plaintiff patients, who alleged the counselor sexually harassed the plaintiffs,

failed. Doe v. Fulton-DeKalb Hosp. Auth., 628 F.3d 1325 (11th Cir. 2010).

Jury question was presented as to a driver's claim for negligent hiring of a police officer because the city could have learned of a previous similar incident of drunkenness and belligerence if the city had contacted the officer's supervisor at the officer's prior employment as required by city operating procedures. Graham v. City of Duluth, 328 Ga. App. 496, 759 S.E.2d 645 (2014).

Proof of employer's negligence.

Summary judgment was granted to the defendant employer on plaintiff employee's claim for negligent retention under O.C.G.A. § 34-7-20 because the plaintiff did not present evidence to create a genuine issue of material fact as to whether the defendant negligently retained the defendant's manager. Ekokotu v. Fed. Express Corp., No. 10-12433, 2011 U.S. App. LEXIS 1126 (11th Cir. Jan. 19, 2011), cert. denied, 132 S. Ct. 420, 181 L. Ed. 2d 260 (U.S. 2011) (Unpublished).

Trial court properly directed a verdict in favor of a hotel in a guest's suit against the hotel for negligent hiring and retention of a massage therapist, who allegedly sexually assaulted the guest, because the guest did not introduce evidence to show that the hotel knew or reasonably should have known that the massage therapist had a tendency to engage in behavior relevant to the guest's injuries. Tomsic v. Marriott Int'l, Inc., 321 Ga. App. 374, 739 S.E.2d 521 (2013).

Sexual harassment. — Court affirmed a district court's grant of summary judgment to an employer and a supervisor on two employees' O.C.G.A. § 34-7-20 claims of negligent hiring and retention of the supervisor, who allegedly sexually harassed the two employees; the employer was not put on notice of the supervisor's alleged propensity for sexual harassment by previous complaints that the supervisor stared at people and touched a co-worker's thigh, as such behavior was not considered to be sexual harassment, nor was there any evidence that these incidents were sexual in nature. Herron v. Morton, 2005 U.S. App. LEXIS 21121 (11th Cir. Sept. 28, 2005) (Unpublished).

Speeding as indicating competency of employee. — Trial court erred in granting an employer's motion for summary judgment in a widow's action to recover for the damages a driver sustained when the driver's car crashed into a tractor-trailer an employee had parked on the side of the road because a jury had to resolve the issues of whether the employee's moving violations, speeding, indicated that the employee would be an incompetent driver and whether the employer failed to exercise reasonable care in hiring and retaining the employee. Coe v. Carroll & Carroll, Inc., 308 Ga. App. 777, 709 S.E.2d 324 (2011).

Impact of failure of federal discrimination suit. — After an employee's federal national origin discrimination and retaliation claims failed, the employee's derivative state law claim of negligent retention and supervision failed because the contested conduct did not amount to a substantive violation of the federal statute. Ekokotu v. Fed. Express Corp., No. 12-16118, 2013 U.S. App. LEXIS 14172 (11th Cir. July 15, 2013) (Unpublished).

34-7-22. Contracts exempting employer from liability are null and void.

JUDICIAL DECISIONS

No application to contractor. — In a suit brought by an independent contractor against a billboard owner seeking to recover for injuries that the contractor sustained upon falling from the owner's billboard, O.C.G.A. § 34-7-22 did not apply to preclude the application of a waiver paragraph in a contract between the parties because the facts were undisputed that the contractor was an independent contractor, not an employee of the owner. Holmes v. Clear Channel Outdoor, Inc., 298 Ga. App. 178, 679 S.E.2d 745 (2009).

CHAPTER 8

EMPLOYMENT SECURITY

Article 2

Definitions

Article 3

Administration

Article 4

Disclosure of Records

Article 5

Contributions and Payments in Lieu of Contributions

Article 6

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Prohibited and Void Acts; Overpayments

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

ARTICLE 1

GENERAL PROVISIONS

34-8-2. Declaration of public policy.

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

JUDICIAL DECISIONS

Good faith effort construed. — Decision denying a teacher unemployment compensation was reversed on appeal because the teacher's failure to pass an exam required as a condition of employment after taking the exam eight times was not due to any conscious neglect or deliberate malfeasance which would have justified disqualifying the teacher from receiving benefits. Johnson v. Butler, 323 Ga. App. 743, 748 S.E.2d 111 (2013).

No public policy exception. — Trial court did not err in concluding that the job applicant's cause of action for fraud failed without considering whether the job applicant had an equitable claim for relief as an exception to the at-will employment doctrine because the stated purpose in enacting O.C.G.A. § 34-8-2 was to provide for the compulsory setting aside of unemployment reserves, not to create a public policy exception to the at-will employment doctrine. Poole v. In Home Health, LLC, 321 Ga. App. 674, 742 S.E.2d 492 (2013).

ARTICLE 2

DEFINITIONS

34-8-21. Base period.

(a) Except as provided in subsection (b) of this Code section, as used in this chapter, the term "base period" means the first four of the last

five completed calendar quarters immediately preceding the first day of an individual's benefit year; provided, however, that, in the case of a combined wage claim under Code Section 34-8-80, the base period shall be that applicable under the unemployment compensation law of the paying state.

(b) If an individual does not have sufficient wages to qualify for benefits under the definition of base period in subsection (a) of this Code section, then his or her base period shall be calculated using the last four completed quarters immediately preceding the first day of the individual's benefit year. Such base period shall be known as the "alternative base period." Applicants shall receive written notice of the alternative base period. Implementation of the alternative base period shall commence on January 1, 2003. Implementation of the alternative base period under this subsection shall be under such terms and conditions as the Commissioner may prescribe by rules and regulations. (Code 1981, § 34-8-21, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2002, p. 1119, § 2; Ga. L. 2004, p. 1074, § 1; Ga. L. 2009, p. 139, § 8/HB 581.)

The 2009 amendment, effective April 21, 2009, deleted the former last sentence of subsection (b), which read: "All benefit payments made under this subsection shall be paid exclusively from amounts credited to the account of this state in the Unemployment Trust Fund by the secretary of the treasury of the United States pursuant to Section 903 of the federal Social Security Act, as amended by the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147)."

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

34-8-24. Bona fide in the labor market.

As used in this chapter, the term "bona fide in the labor market" means that any person claiming benefits under this chapter must be available for full-time employment, as that term is generally understood in the trade or work classification involved, without regard to prior work restrictions, provided that no individual who is otherwise eligible shall be deemed ineligible for benefits solely because the individual seeks, applies for, or accepts only part-time work, instead of full-time work, provided the individual claiming benefits worked part-time during a majority of the weeks of work in the base period and the individual is available for part-time work for at least 20 hours per week. (Code 1981, § 34-8-24, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2009, p. 139, § 5/HB 581.)

The 2009 amendment, effective April 21, 2009, added the proviso at the end of this Code section.

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

34-8-35. Employment.

(a) As used in this chapter, the term "employment" means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(b) The term "employment" shall include an individual's entire service performed within and outside this state, if:

(1) The service is localized in this state. Service shall be deemed to be localized within a state if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state. "Incidental service" shall include service that is temporary or transitory in nature or consists of isolated transactions;

(2) The service is not localized in any state but some of the service is performed in this state and:

(A) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state;

(3) The service is performed within the United States or Canada, if such service is not covered under the unemployment compensation law of any other state or Canada and the place from which the service is directed and controlled is in this state; or

(4) The service is performed outside the United States, except Canada, by an individual who is a citizen of the United States in the employ of an American employer, other than service which is deemed "employment" under subsections (d) and (e) of this Code section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business is located in this state;

(B) The employer has no place of business in the United States, but:

(i) The employer is an individual who is a resident of this state;

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of subparagraphs (A) and (B) of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service pursuant to this chapter.

(c) For the purposes of paragraph (4) of subsection (b) of this Code section:

(1) The term "American employer" means:

(A) An individual who is a resident of the United States;

(B) A partnership, if two-thirds or more of the partners are residents of the United States;

(C) A trust, if all the trustees are residents of the United States; or

(D) A corporation organized under the laws of the United States or of any state.

(2) The term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(d) Services performed within this state but not covered under subsection (b) of this Code section shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(e) Services not covered under subsection (b) of this Code section and performed entirely outside this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the Commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual be deemed to be employment subject to this chapter.

(f) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown that:

(1)(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact; and

(B) Such individual is customarily engaged in an independently established trade, occupation, profession, or business; or

(2) Such individual and the services performed for wages are the subject of an SS-8 determination by the Internal Revenue Service, which decided against employee status.

(g)(1) The term "employment" shall include all services performed, including service in interstate commerce, by:

(A) Any officer of a corporation; or

(B) Any individual, other than an individual who is an employee under subparagraph (A) of this paragraph, who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry-cleaning services for his or her principal; or

(ii) As a traveling or city salesman, other than an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of and the transmission to his principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(2) For purposes of subparagraph (B) of paragraph (1) of this subsection, the term "employment" shall include services described in divisions (1)(B)(i) and (1)(B)(ii) of this subsection performed only if:

(A) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(B) The individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and

(C) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(h) The term "employment" shall include service performed in the employ of this state or any of its instrumentalities or any political subdivision of this state or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of

that act and is not excluded from "employment" under paragraph (3) of subsection (j) of this Code section. Each of the governmental entities described above shall be individually liable for the payment of contributions or reimbursement for payment of benefits as provided in Code Sections 34-8-158 through 34-8-161; and each shall be individually responsible for the filing of quarterly wage summary reports as promulgated in regulations by the Commissioner and provided in Code Section 34-8-165. For the purposes of the unemployment compensation coverage provided for by this chapter, employees of county and district health agencies established under Chapter 3 of Title 31 and employees of the community service boards established under Chapter 2 of Title 37 are deemed to be employees of this state.

(i) The term "employment" shall include service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if such organization meets the definition of employer in Code Section 34-8-33.

(j) For the purposes of subsections (h) and (i) of this Code section, the term "employment" does not apply to service performed:

(1) In the employ of:

(A) A church or convention or association of churches; or

(B) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order;

(3) In the employ of a governmental entity referred to in subsection (h) of this Code section if such service is performed by an individual in the exercise of duties:

(A) As an elected official;

(B) As a member of a legislative body or a member of the judiciary of a state or political subdivision;

(C) As a member of the state National Guard or Air National Guard; or

(D) In a position which, under or pursuant to the laws of this state, is designated as (i) a major nontenured policy-making or advisory position, or (ii) a policy-making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week;

(4) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(5) By an individual receiving work relief or work training as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof. This exclusion shall not apply to programs that provide for and require unemployment insurance coverage for the participants; or

(6) By an inmate of a custodial or penal institution.

(k) The term "employment" shall include service performed on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

(l) The term "employment" shall include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, but only if the employing unit meets the definition of employer in Code Section 34-8-33.

(m)(1) The term "employment" shall include service performed by an individual in agricultural labor, as defined in paragraph (2) of this subsection, but only if the employing unit meets the definition of employer in Code Section 34-8-33.

(2) As used in this subsection, the term "agricultural labor" means service on a farm:

(A) In the employ of any employing unit in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, if the major part of such service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of

the federal Agricultural Marketing Act of 1946, as amended, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and used exclusively for supplying and storing water for farming purposes; or

(D) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity, but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. This paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. This paragraph shall also apply to services performed in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service prescribed in this paragraph, but only if such operators produced more than one-half of the commodity with respect to which such service is performed.

(3) As used in this subsection, the term "farm" includes:

(A) Those farms used for production of stock, dairy products, poultry, fruit, and fur-bearing animals; and

(B) Truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, or other similar structures or tracts used primarily for the raising of agricultural or horticultural commodities.

(4) For the purposes of this subsection, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(A) If such crew leader holds a valid certificate of registration under the federal Farm Labor Contractor Registration Act of 1963 or if substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(B) If such individual is not an employee of such other person within the meaning of paragraph (1) of this subsection.

(5) For the purposes of paragraph (4) of this subsection, in the case of any worker who is furnished by a crew leader to perform service in

agricultural labor for any other person and who is not treated as an employee of such crew leader under this paragraph:

(A) Such other person and not the crew leader shall be treated as the employer of the worker; and

(B) Such other person shall be treated as having paid cash remuneration to the worker in an amount equal to the amount of cash remuneration paid to the worker by the crew leader, either on the worker's own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(6) For purposes of paragraphs (4) and (5) of this subsection, the term "crew leader" means an individual who:

(A) Furnishes workers to perform service in agricultural labor for any other person;

(B) Pays, either on such individual's own behalf or on behalf of another person, the workers so furnished for the service in agricultural labor performed by them; and

(C) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(n) The term "employment" shall not include:

(1) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50.00 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) Such individual was regularly employed, as determined under subparagraph (A) of this paragraph, by such employer in the performance of such service during the preceding calendar quarter;

(2) Service performed in the employ of a hospital, if such service is performed by a patient of a hospital;

(3) Service performed by an individual in the employ of the individual's son, daughter, or spouse and service performed by a child under the age of 21 years in the employ of his or her father or mother;

(4) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States;

except that, if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law or act, then, to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units;

(5) Service performed in the employ of an employer, as defined by the federal Railroad Unemployment Insurance Act, or as an "employee representative," as defined by the federal Railroad Unemployment Insurance Act, and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees or under any other unemployment compensation system established by an act of Congress; provided, however, that the Commissioner is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in Code Section 34-8-71 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter;

(6) Service performed in any calendar quarter in the employ of any organization exempt from income tax under 26 U.S.C. Section 501:

(A) The remuneration for which does not exceed $50.00; or

(B) In the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and (ii) such employment will not be covered by any program of unemployment insurance;

(7) Services performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed in the employ of a hospital in a clinical training program for a period

of one year by an individual immediately following the completion of a four-year course in a medical school chartered or approved pursuant to state law;

(8) Service performed by an individual under the age of 18 years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(9) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor or as a licensed real estate salesperson, if all such service performed by such individual for such employer is performed for remuneration solely by way of commission;

(10) Services performed for an employer who is a common carrier of persons or property by an individual, firm, or corporation, as commission agent, in disseminating information with respect to and selling transportation of persons or property, and in maintaining facilities incidental thereto, including waiting areas, dining rooms, and rest rooms for passengers and storage space for property; provided, however, that:

(A) All such services are performed by such individual, firm, or corporation as an independent contractor for such employer and are remunerated solely by way of commissions on the sale price of such transportation;

(B) The employer exercises no general control over such commission agent but only such control as is necessary to assure compliance with its filed tariffs and with the laws of the United States and the State of Georgia and the rules and regulations of the Department of Public Safety, the Federal Motor Carrier Safety Administration, and all other regulatory bodies having jurisdiction of the premises; and

(C) Such services are not rendered in an establishment devoted primarily to use as a waiting room for the passengers or as a storage room for the property carried or to be carried by such common carrier;

(11) Service performed by an individual who is enrolled as a student at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, in a full-time program taken for credit at such institution, which program combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the

employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(12) Service performed by an individual in or as an officer or member of the crew of a vessel while it is engaged in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweed, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

(A) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes; and

(B) Service performed on or in connection with a vessel of more than ten net tons, which tonnage shall be determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States;

(13) Service, other than service performed by a child under the age of 18 years in the employ of his or her father or mother, performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which:

(A) Such individual does not receive any cash remuneration other than as provided in subparagraph (B) of this paragraph;

(B) Such individual receives a share of the boat's catch or, in the case of a fishing operation involving more than one boat, the boats' catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch; and

(C) The amount of such individual's share depends on the amount of the boat's catch or, in the case of a fishing operation involving more than one boat, the boats' catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat or, in the case of a fishing operation involving more than one boat, the operating crew of each boat from which the individual receives a share is normally made up of fewer than ten individuals;

(14) Service performed in the employ of a foreign government;

(15) If the services performed during one-half or more of any pay period by an employee for the employing unit employing him or her constitute employment, all the services of such employee for such period shall be deemed to be employment; but, if the services performed during more than one-half of any such pay period by an employee for the employing unit employing him or her do not

constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this Code section, the term "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the employee by the employing unit employing him or her. This Code section shall not be applicable with respect to services performed in a pay period by an employee for the employing unit employing him or her where any of such service is excepted by paragraph (5) of this subsection;

(16) Services performed by an independent contract carrier for an employer who is a publisher or distributor of printed materials by an individual, firm, or corporation in transporting, assembling, delivering, or distributing printed materials and in maintaining any facilities or equipment incidental thereto, provided that:

(A) The independent contract carrier has with the employer a written contract as an independent contractor;

(B) Remuneration for the independent contract carrier is on the basis of the number of deliveries accomplished;

(C) With exception to providing the area or route which an independent contract carrier may or may not service, or providing materials or direction for the packaging or assembly of printed materials, the employer exercises no general control regarding the method of transporting, assembling, delivering, or distributing the printed materials; and

(D) The contract entered by the independent contract carrier for such services does not prohibit it from the transportation, delivery, assembly, or distribution of printed materials for more than one employer.

Provided, however, that the exclusion provided in this paragraph shall not apply to any such employment on behalf of an employing unit defined in subsection (h) or (i) of this Code section;

(17) Services performed for a common carrier of property, persons, or property and persons by an individual consisting of the pickup, transportation, and delivery of property, persons, or property and persons; provided that:

(A) The individual is free to accept or reject assignments from the common carrier;

(B) Remuneration for the individual is on the basis of commissions, trips, or deliveries accomplished;

(C) Such individual personally provides the vehicle used in the pickup, transportation, and delivery of the property, persons, or property and persons;

(D) Such individual has a written contract with the common carrier;

(E) The written contract states expressly and prominently that the individual knows:

(i) Of the responsibility to pay estimated social security taxes and state and federal income taxes;

(ii) That the social security tax the individual must pay is higher than the social security tax the individual would pay if he or she were an employee; and

(iii) That the work is not covered by the unemployment compensation laws of Georgia; and

(F) The written contract does not prohibit such individual from the pickup, transportation, or delivery of property, persons, or property and persons for more than one common carrier or any other person or entity; or

(18) Services performed by a direct seller, provided that:

(A) Such individual:

(i) Is engaged in the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(ii) Is engaged in the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or otherwise than in a permanent retail establishment;

(B) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subparagraph (A) of this paragraph is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(C) The services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee for federal and state tax purposes. (Code 1981, § 34-8-35, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1993, p. 323, § 1; Ga. L. 1994, p. 97, § 34; Ga. L. 1994, p. 640, § 1; Ga. L. 1994, p. 1717, § 1; Ga. L. 2005, p. 1200, § 1/HB 520; Ga. L. 2006, p. 822, § 1/SB 486; Ga. L. 2007, p. 394, § 1/HB 443; Ga. L. 2012, p. 580, § 6/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Department of Public Safety, the Federal Motor Carrier Safety Administration" for "Public Service Commission, the Interstate Commerce Commission" near the end of subparagraph (n)(10)(B).

Law reviews. — For survey article on labor and employment law, see 59 Mercer L. Rev. 233 (2007).

JUDICIAL DECISIONS

ANALYSIS

SERVICES NOT COVERED

Services Not Covered

Co-pilot. — Superior court erred in affirming the decision of the Georgia Department of Labor that a limited liability company (LLC) was required to pay unemployment compensation taxes on the wages paid to a co-pilot because the co-pilot was not an employee of the LLC pursuant to the Employment Security Act, O.C.G.A. § 34-8-35(f)(1); the LLC established that the LLC lacked significant control over the co-pilot because the co-pilot was free to accept or reject offers to fly, did not have a prescribed number of hours or flights to work, could vacation whenever the co-pilot chose, and was free to fly for other companies. Sky King 101, LLC v. Thurmond, 314 Ga. App. 377, 724 S.E.2d 412 (2012).

34-8-43. Most recent employer.

(a) As used in this chapter and except as otherwise provided in subsection (b) of this Code section, the term "most recent employer" means, for claims with benefit years that begin on or after July 1, 2015, the last employer for whom an individual worked.

(b) As used in this chapter and except as otherwise provided in subsection (a) of this Code section, the term "most recent employer" means, for claims with benefit years that begin on or before June 30, 2015, the last liable employer for whom an individual worked and:

(1) The individual was separated from work for a disqualifying reason;

(2) The individual was released or separated from work under nondisqualifying conditions and earned wages of at least ten times the weekly benefit amount of the claim; or

(3) The employer files the claim for the individual by submitting such reports as authorized by the Commissioner.

(c) Where no employer in subsection (b) of this Code section meets the definition of most recent employer from the beginning of the base period to the date the claim is filed, the last liable employer for whom the individual worked shall be considered as the most recent employer for determining eligibility for benefits.

(d) Where periods of employment with the same liable employer fail, independently, to meet the definition of most recent employer in

subsection (a) or (b) of this Code section, such periods of employment may be used cumulatively to determine the most recent employer and eligibility for benefits shall be determined by the reason for separation from the last employment with such employer. (Code 1981, § 34-8-43, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2015, p. 830, § 1/HB 117.)

The 2015 amendment, effective May 6, 2015, added subsection (a); redesignated former subsection (a) as present subsection (b); inserted ", for claims with benefit years that begin on or before June 30, 2015," in the middle of present subsection (b); deleted former subsection (b), which read: "(b) As used in this chapter, the term 'most recent employer' means, for claims with benefit years that begin on or before December 31, 1991, the last liable employer for whom an individual worked and:

"(1) From whom the individual was separated from work for a disqualifying reason; or

"(2) From whom the individual was released or separated from work under nondisqualifying conditions and earned wages equal to the lesser of $500.00 or eight times the weekly benefit amount of the claim."; and deleted "(a) or" following "subsection" near the beginning of subsection (c).

34-8-49. Wages.

(a)(1) As used in this chapter, the term "wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with the rules or regulations prescribed by the Commissioner.

(2) The term "wages" also means, for the purpose of determining benefit rights of a claimant, wages payable but unpaid where the employer has been adjudicated bankrupt.

(b) The term "wages" shall not include:

(1) For the purposes of Code Section 34-8-20 and Articles 5 and 6 of this chapter, except Code Sections 34-8-156 and 34-8-157, any remuneration paid in excess of taxable wages. For purposes of this chapter, "taxable wages" means that portion of remuneration paid by an employer to each employee, subject to unemployment insurance contributions for each calendar year which does not exceed the following amounts:

(A) For the period January 1, 1976, through December 31, 1982 — $6,000.00;

(B) For the period January 1, 1983, through December 31, 1985 — $7,000.00;

(C) For the period January 1, 1986, through December 31, 1989 — $7,500.00;

(D) For the period January 1, 1990, through December 31, 2012 — $8,500.00; and

(E) January 1, 2013, and thereafter — $9,500.00;

provided, however, that in cases of successorship of an employer, the amount of wages paid by the predecessor shall be considered for purposes of this provision as having been paid by the successor employer;

(2) The amount of any payment to or on behalf of an employee under a plan or system established by an employer which makes provision for its employees generally or for a class or classes of its employees, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of:

(A) The termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, other than any such payment or series of payments which would have been paid to the employee or his or her dependents if the employee's employment relationship had not been so terminated;

(B) The supplementation of unemployment benefits to an individual under the terms of a written agreement, contract, trust arrangement, or other instrument. Such payments shall not be construed to be wages or compensation for personal services under this chapter and benefit payments under this chapter shall not be denied or reduced because of the receipt of payments under such arrangements or plans;

(C) Sickness or accident disability, but, in the case of payments made to an employee or any of his or her dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workers' compensation law;

(D) Medical and hospitalization expenses in connection with sickness or accident disability;

(E) Death; or

(F) Temporary layoff, but, in the case of payments made to an employee who is temporarily laid off or to any of his or her dependents, this subparagraph shall exclude from the term "wages" only payments made out of a 100 percent vested account in the name of such employee under a pension or profit-sharing plan or trust that is qualified under Section 501(a) of the federal Internal Revenue Code of 1986;

(3) Payment by an employer without deduction from the remuneration of an employee of the tax imposed by Section 3101 of the federal

Internal Revenue Code of 1986, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(4) Any remuneration paid for services by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law;

(5) Any remuneration paid in any medium other than cash to an employee for agricultural labor or for service not in the course of the employer's trade or business;

(6) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(7) Any payment made to, or on behalf of, an employee or his beneficiary from, under, or to a trust, annuity plan, simplified employee pension plan, annuity contract, exempt governmental deferred compensation plan, supplemental pension benefits plan or trust, or cafeteria plan, as such payments are defined under Section 3306(b)(5) of the federal Internal Revenue Code of 1986; or

(8) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died.

(c) Any remuneration not elsewhere included in the definition of wages by this chapter, but for which services are performed within this state and for which an employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state fund, shall, for the purposes of this chapter and notwithstanding any other provisions, constitute wages for employment, but only to the extent that such remuneration constitutes wages on which federal tax is payable. (Code 1981, § 34-8-49, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1992, p. 776, § 1; Ga. L. 2012, p. 950, § 1/HB 347.)

The 2012 amendment, effective May 2, 2012, deleted "and" at the end of subparagraph (b)(1)(C); substituted the present provisions of subparagraph (b)(1)(D) for the former provisions, which read: "January 1, 1990, and thereafter — $8,500.00;"; and added subparagraph (b)(1)(E).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 92 (2012).

ARTICLE 3

ADMINISTRATION

34-8-76. Duties of Commissioner to reduce and prevent unemployment.

The Commissioner, with the advice and aid of the State Advisory Council and the local or industry advisory councils, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depressions and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish in print or electronically the results of investigations and research studies. (Code 1981, § 34-8-76, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" near the end of this Code section.

34-8-85. Withdrawals from Unemployment Trust Fund for expenditures under chapter.

Moneys shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of regular benefits and extended benefits and for refunds pursuant to Code Section 34-8-164 and in accordance with regulations prescribed by the Commissioner, except that moneys credited to this state's account pursuant to Section 903 of the federal Social Security Act, as amended, may be requisitioned and used exclusively as provided in paragraphs (1) through (5) of this Code section:

(1) **Funds for payment of future benefits.** The Commissioner shall from time to time requisition from the Unemployment Trust Fund amounts, not exceeding the amount standing in this state's account therein, as deemed necessary by the Commissioner for the payment of benefits for a reasonable future period. Upon receipt thereof, the Commissioner shall deposit the funds in the benefit account. The benefit account shall be used solely for the payment of regular benefits and extended benefits or refunds upon requisition of the Commissioner as authorized in this Code section. Withdrawal of such funds in the benefit account shall not be subject to any provisions of law requiring specific appropriations or other formal

releases of state officers of moneys in their custody. The Commissioner's requisitions for lump sum withdrawals for the payment of individual benefit claims shall not exceed the balance of funds in the Unemployment Trust Fund; and such requisition shall be in an amount estimated to be necessary for benefit payments for such reasonable future period as the Commissioner may by regulation prescribe. Such lump sum amounts, when received by the Commissioner, shall be immediately deposited in the benefit account maintained in the name of the Commissioner in such bank or public depository and under such conditions as the Commissioner determines necessary; provided, however, that such bank or public depository shall be one in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund; provided, further, that such moneys shall be secured by the depository bank to the same extent and in the same manner as required by the general laws of this state governing depositories of state funds and that collateral pledged for this purpose or bonds given for this purpose shall be kept separate and distinct from any collateral or bonds pledged or given to secure other funds of the state. The Commissioner or a duly authorized representative of the Commissioner shall be authorized to draw and issue checks on the benefit account for the payment of individual benefit claims. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods or, in the discretion of the Commissioner, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the Unemployment Trust Fund as provided in Code Section 34-8-84;

(2) **Appropriation of administration expenses.** Moneys credited to the account of this state in the Unemployment Trust Fund by the secretary of the treasury of the United States pursuant to Section 903 of the federal Social Security Act, as amended, may be requisitioned and used in the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the General Assembly, provided that the expenses are incurred and the moneys are requisitioned after the enactment of an appropriations Act which:

(A) Specifies the purposes for which such moneys are appropriated and the amount appropriated therefor; and

(B) Limits the period within which such moneys may be expended to a period ending not more than two years after the date of the enactment of the appropriations Act;

(3) **Limitation on withdrawals and use of funds.** Moneys credited to the account of this state pursuant to Section 903 of the federal Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits or for the payment of expenses for the administration of this chapter and of public employment offices pursuant to this Code section;

(4) **Records of appropriated funds.** Moneys appropriated for the payment of expenses of administration pursuant to this Code section shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the Employment Security Administration Fund, but, until expended, shall remain a part of the Unemployment Trust Fund. The Commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any moneys so deposited are, for any reason, not to be expended for the purposes for which they were appropriated, such moneys shall be returned promptly to the secretary of the treasury of the United States for credit to this state's account in the Unemployment Trust Fund; and

(5) **Appropriations to Department of Labor.** There is authorized to be appropriated by the General Assembly to the Department of Labor any part of or all moneys credited to the account of this state in the Unemployment Trust Fund by the secretary of the treasury of the United States pursuant to Section 903 of the federal Social Security Act, as amended, and as provided in this Code section; provided, however, that notwithstanding any other provisions of this Code section to the contrary, moneys credited with respect to federal fiscal years 1999, 2000, and 2001, and moneys credited with respect to the special transfer made under Section 903(g) of said Act, shall be used solely for the administration of the unemployment insurance program in Georgia and are not subject to appropriations by the General Assembly. (Code 1981, § 34-8-85, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1992, p. 6, § 34; Ga. L. 1998, p. 1501, § 1; Ga. L. 2009, p. 139, § 10/HB 581.)

The 2009 amendment, effective April 21, 2009, inserted ", and moneys credited with respect to the special transfer made under Section 903(g) of said Act," near the end of paragraph (5).

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

34-8-92. Disposition of fines, penalties, and interest collected; amounts collected pursuant to Code Section 34-8-255 to be returned to Unemployment Compensation Fund.

(a) All fines, penalties, and interest collected under the terms of this chapter shall be paid into the state treasury. The General Assembly shall be authorized to appropriate to the Commissioner all such funds so raised and deposited in the state treasury, which shall be payable upon requisition of the Commissioner. Such funds are to be used for the replacement of funds, as provided in Code Section 34-8-82, and for incidental expenses incurred in the administration of this chapter for which funds are not granted by the federal government through the United States secretary of labor or other agencies.

(b) Notwithstanding subsection (a) of this Code section, any amounts collected pursuant to Code Section 34-8-255 shall be returned to the Unemployment Compensation Fund to be used exclusively for the purposes of this chapter as required by federal law. (Code 1981, § 34-8-92, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1992, p. 6, § 34; Ga. L. 2014, p. 730, § 1/HB 714.)

The 2014 amendment, effective April 24, 2014, designated the existing provisions as subsection (a) and added subsection (b).

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

ARTICLE 4

DISCLOSURE OF RECORDS

34-8-121. Information or records shall be private and confidential; release authorized; maintenance of records; disclosure of private and confidential information; destruction of outdated records.

(a) Any information or records concerning an individual or employing unit obtained by the department pursuant to the administration of this chapter or other federally funded programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this article or by regulation. This article does not create a rule of evidence. Information or records may be released by the department when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department. The provisions of paragraphs (1) through (3) of subsection (a) of Code Section 34-8-125 shall not apply to such release.

(b)(1) Each employing unit shall keep true and accurate records containing such information as the Commissioner may prescribe.

Such records shall be open to inspection and be subject to being copied by the Commissioner or an authorized representative of the Commissioner at any time and as often as may be necessary. In addition to information prescribed by the Commissioner, each employer shall keep records of and report to the Commissioner quarterly the street address of each establishment, branch, outlet, or office of such employer, the nature of the operation, the number of persons employed, and the wages paid at each establishment, branch, outlet, or office.

(2) The Commissioner or an authorized representative of the Commissioner may require from any employing unit any sworn or unsworn reports deemed necessary for the effective administration of this chapter. Any member of the board of review, any administrative hearing officer, or any field representative may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which are deemed necessary for the effective administration of this chapter.

(3) Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained or obtained from any individual, claimant, employing unit, or employer pursuant to the administration of this chapter, except to the extent necessary for the proper administration and enforcement of this chapter, shall be held confidential and shall not be subject to subpoena in any civil action or proceeding, published, or open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity; but any claimant, employer, or a duly authorized representative, at a hearing before an administrative hearing officer or the board of review, shall be supplied with information from such records to the extent necessary for the proper presentation of his or her claim. Any person who violates any provision of this paragraph shall upon conviction be guilty of a misdemeanor.

(4) Notwithstanding the provisions of Code Sections 50-6-9 and 50-6-29 relating to the powers of the state auditor to disclose private and confidential information or records obtained by the department pursuant to the administration of this chapter or other federally funded programs for which the department has responsibility, such private and confidential information or records may be disclosed by the state auditor only in accordance with all provisions of this article and the requirements of 20 C.F.R. 603 and, after notice and review, upon the written direction of the Commissioner issued in advance of such disclosure.

(5) On orders of the Commissioner, any records or documents received or maintained by the Commissioner under the provisions of

this chapter or the rules and regulations promulgated under this chapter may be destroyed under such safeguards as will protect their confidential nature two years after the date on which such records or documents last serve any useful, legal, or administrative purpose in the administration of this chapter or in the protection of the rights of anyone. (Code 1981, § 34-8-121, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2009, p. 139, § 7/HB 581.)

The 2009 amendment, effective April 21, 2009, added paragraph (b)(4) and redesignated former paragraph (b)(4) as present paragraph (b)(5).

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

ARTICLE 5

CONTRIBUTIONS AND PAYMENTS IN LIEU OF CONTRIBUTIONS

34-8-150. Payment of contributions by employers; deferral of de minimis amounts.

(a) Contributions shall accrue from each employer for each calendar year in which the employer is subject to this chapter with respect to wages payable for employment, except as provided in Code Sections 34-8-158 through 34-8-162. Except as otherwise provided in this Code section, such contributions shall become due and be paid before the last day of the month next following the end of the calendar quarter to which they apply, in accordance with such regulations as the Commissioner may prescribe; provided, however, that with respect to employers as defined in paragraph (2) of subsection (a) of Code Section 34-8-33, the Commissioner shall provide by regulation that such contributions shall become due and be paid on an annual basis not later than such date as shall be prescribed by resolution of the Commissioner. Such contributions shall become delinquent if not paid when due and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(b)(1) For calendar quarters beginning on or after July 1, 2009, when the combined amount of contributions under this Code section and assessments under Code Section 34-8-180 or 34-8-181 due from an employer for any calendar quarter does not exceed $5.00, such amount may be regarded as a de minimis amount with respect to that calendar quarter.

(2) Payment of such de minimis amount for such calendar quarter, otherwise due before the last day of the month next following the end of the calendar quarter, may be deferred, at the option of the

employer, until the January 31 reporting date next following, if the employer:

(A) Files all quarterly wage and tax reports, including a report of such de minimis amount due;

(B) Timely pays all other amounts due; and

(C) Makes full payment of any deferred de minimis amount by the January 31 report date next following.

(3) In the event that an employer fails to comply with paragraph (2) of this subsection, any such deferred de minimis amount shall become delinquent as of the date originally due under this Code section and Code Section 34-8-165, 34-8-180, or 34-8-181, as applicable, and the employer shall be subject to all the provisions thereof.

(c) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. (Code 1981, § 34-8-150, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1995, p. 781, § 1; Ga. L. 2002, p. 1084, § 1; Ga. L. 2009, p. 139, § 2/HB 581.)

The 2009 amendment, effective April 21, 2009, in subsection (a), substituted "Except as otherwise provided in this Code section, such" for "Such" at the beginning of the second sentence; added subsection (b); and redesignated former subsection (b) as present subsection (c).

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

JUDICIAL DECISIONS

Collection from Chapter 7 debtor. — While the debtor was the responsible person for filing the debtor's employer's unemployment returns and paying unemployment taxes to Georgia's unemployment fund, because the debtor received discharge in the debtor's Chapter 7 case, any act to collect from the debtor a debt for unemployment taxes, interest and penalties with respect to wages paid by the employer was enjoined. Shaw v. Georgia (In re Shaw), No. 12-5353, 2014 Bankr. LEXIS 1540 (Bankr. N.D. Ga. Apr. 2, 2014).

Relationship to bankruptcy laws. — Debtor was entitled to judgment that any debt the debtor owed for unpaid unemployment taxes was dischargeable because taxes that O.C.G.A. § 34-8-150(a) required employers to make did not constitute "tax required to be collected or withheld" within the meaning of 11 U.S.C. § 507(a)(8)(C) and, therefore, the unemployment taxes were not excepted from discharge. Shaw v. Georgia (In re Shaw), No. 12-5353, 2014 Bankr. LEXIS 1540 (Bankr. N.D. Ga. Apr. 2, 2014).

34-8-151. Rate of employer contributions.

(a) For periods prior to April 1, 1987, or after December 31, 2016, each new or newly covered employer shall pay contributions at a rate of

2.7 percent of wages paid by such employer with respect to employment during each calendar year until the employer is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Sections 34-8-158 through 34-8-162.

(b) For periods on or after April 1, 1987, but on or before December 31, 1999, each new or newly covered employer shall pay contributions at a rate of 2.64 percent of wages paid by such employer with respect to employment during each calendar year until the employer is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Sections 34-8-158 through 34-8-162.

(c) For periods on or after January 1, 2000, but on or before December 31, 2016, each new or newly covered employer shall pay contributions at a rate of 2.62 percent of wages paid by such employer with respect to employment during each calendar year until the employer is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Sections 34-8-158 through 34-8-162. (Code 1981, § 34-8-151, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1996, p. 693, § 1; Ga. L. 1998, p. 1501, § 2; Ga. L. 1999, p. 449, § 2; Ga. L. 1999, p. 521, § 2; Ga. L. 2005, p. 1200, § 2/HB 520; Ga. L. 2006, p. 72, § 34/SB 465; Ga. L. 2011, p. 390, § 1/HB 292.)

The 2011 amendment, effective May 11, 2011, substituted "December 31, 2016" for "December 31, 2011" in subsections (a) and (c); and substituted "Code Sections 34-8-158 through 34-8-162" for "Code Sections 34-8-158, 34-8-159, 34-8-160, 34-8-161, and 34-8-162" at the end of subsection (c).

34-8-155. Benefit experience; variations from standard rate.

(a) Employers shall be classified in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts so that contribution rates will reflect such experience. Employer rates shall be computed based on each employer's own experience rating record as of the computation date, June 30 of each year. The computed rate shall apply to taxable wages paid during the calendar year immediately following the computation date.

(b) Any employer who has failed to file all required tax and wage reports, including all such reports of all predecessor employers, by the end of the month following any computation date shall be notified by the department of such failure. If the required tax and wage reports remain unfiled 30 days following notice, the employer will not be eligible for a rate computation but shall be assigned the maximum rate allowable after application of the State-wide Reserve Ratio, if computed for such year, as provided in Code Section 34-8-156. Employers having positive reserve accounts will be assigned the maximum rate allowable for positive reserve accounts. Employers having deficit reserve accounts

will be assigned the maximum rate allowable for deficit reserve accounts. Such rates shall remain effective until the end of the calendar year for which the rates have been assigned.

(c) For the periods prior to April 1, 1987, or after December 31, 2016, variations from the standard rate of contributions shall be determined in accordance with the following requirements:

(1) If, on the computation date, the total of an employer's contributions exceeds the total benefits charged to its account, its contribution rate for the following calendar year shall be determined by subtracting benefits charged from contributions and dividing the difference by the employer's average annual payroll. The resulting percentage will then be applied to the following rate table. Contributions paid by the end of the month following the computation date and contributions paid within 30 days of notice of failure to file all required tax and wage reports will be considered as having been paid on the computation date.

RATE TABLE FOR EMPLOYERS
WITH POSITIVE RESERVE ACCOUNTS

If the excess percentage:		
Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.00	0.86	2.16
0.86	1.17	2.08
1.17	1.48	2.00
1.48	1.79	1.92
1.79	2.10	1.84
2.10	2.41	1.76
2.41	2.72	1.68
2.72	3.04	1.60
3.04	3.35	1.52
3.35	3.65	1.44
3.65	3.97	1.36
3.97	4.29	1.28
4.29	4.60	1.20
4.60	4.91	1.12
4.91	5.22	1.04
5.22	5.53	0.96
5.53	5.84	0.88
5.84	6.15	0.80

RATE TABLE FOR EMPLOYERS
WITH POSITIVE RESERVE ACCOUNTS

If the excess percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
6.15	6.47	0.72
6.47	6.77	0.64
6.77	7.08	0.56
7.08	7.40	0.48
7.40	7.71	0.40
7.71	8.02	0.32
8.02	8.33	0.24
8.33	8.64	0.16
8.64	8.95	0.08
8.95 and over		0.04

(2) If, on the computation date, the total of an employer's contributions is less than the total benefits charged to its account, its contribution rate for the following calendar year shall be determined by subtracting contributions from benefits charged and dividing the difference by the employer's average annual payroll. The resulting percentage will then be applied to the following rate table. Contributions paid by the end of the month following the computation date and contributions paid within 30 days of notice of failure to file all required tax and wage reports will be considered as having been paid on the computation date.

RATE TABLE FOR EMPLOYERS
WITH DEFICIT RESERVE ACCOUNTS

If the deficit percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.0	0.5	2.2
0.5	1.5	2.4
1.5	2.5	2.6
2.5	3.5	2.8
3.5	4.5	3.0
4.5	5.5	3.2

RATE TABLE FOR EMPLOYERS
WITH DEFICIT RESERVE ACCOUNTS

If the deficit percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
5.5	6.5	3.4
6.5	7.5	3.6
7.5	8.5	3.8
8.5	9.5	4.0
9.5	10.5	4.2
10.5	11.5	4.4
11.5	12.5	4.6
12.5	13.5	4.8
13.5	14.5	5.0
14.5	15.5	5.2
15.5 and over		5.4

(d) For the periods on or after April 1, 1987, but on or before December 31, 1999, variations from the standard rate of contributions shall be determined in accordance with the following requirements:

(1) If, on the computation date, the total of an employer's contributions exceeds the total benefits charged to its account, its contribution rate for the following calendar year shall be determined by subtracting benefits charged from contributions and dividing the difference by the employer's average annual payroll. The resulting percentage will then be applied to the following rate table. Contributions paid by the end of the month following the computation date and contributions paid within 30 days of notice of failure to file all required tax and wage reports will be considered as having been paid on the computation date.

RATE TABLE FOR EMPLOYERS
WITH POSITIVE RESERVE ACCOUNTS

If the excess percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.00	0.86	2.125

RATE TABLE FOR EMPLOYERS WITH POSITIVE RESERVE ACCOUNTS

If the excess percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.86	1.17	2.043
1.17	1.48	1.962
1.48	1.79	1.881
1.79	2.10	1.800
2.10	2.41	1.725
2.41	2.72	1.643
2.72	3.04	1.562
3.04	3.35	1.481
3.35	3.65	1.400
3.65	3.97	1.325
3.97	4.29	1.243
4.29	4.60	1.162
4.60	4.91	1.081
4.91	5.22	1.000
5.22	5.53	0.925
5.53	5.84	0.843
5.84	6.15	0.762
6.15	6.47	0.681
6.47	6.77	0.600
6.77	7.08	0.525
7.08	7.40	0.443
7.40	7.71	0.362
7.71	8.02	0.281
8.02	8.33	0.200
8.33	8.64	0.125
8.64	8.95	0.043
8.95 and over		0.040

(2) If, on the computation date, the total of an employer's contributions is less than the total benefits charged to the account of such employer, the contribution rate for the following calendar year shall be determined by subtracting contributions from benefits charged and dividing the difference by the employer's average annual payroll. The resulting percentage will then be applied to the following rate table. Contributions paid by the end of the month following the computation date and contributions paid within 30 days of notice of

failure to file all required tax and wage reports will be considered as having been paid on the computation date.

RATE TABLE FOR EMPLOYERS
WITH DEFICIT RESERVE ACCOUNTS

If the deficit percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.0	0.5	2.16
0.5	1.5	2.36
1.5	2.5	2.56
2.5	3.5	2.76
3.5	4.5	2.96
4.5	5.5	3.16
5.5	6.5	3.36
6.5	7.5	3.56
7.5	8.5	3.76
8.5	9.5	3.96
9.5	10.5	4.16
10.5	11.5	4.36
11.5	12.5	4.56
12.5	13.5	4.76
13.5	14.5	4.96
14.5	15.5	5.16
15.5 and over		5.40

(e) For the periods on or after January 1, 2000, but on or before December 31, 2016, variations from the standard rate of contributions shall be determined in accordance with the following requirements:

(1) If, on the computation date, the total of an employer's contributions exceeds the total benefits charged to its account, its contribution rate for the following calendar year shall be determined by subtracting benefits charged from contributions and dividing the difference by the employer's average annual payroll. The resulting percentage will then be applied to the following rate table. Contributions paid by the end of the month following the computation date and contributions paid within 30 days of notice of failure to file all required tax and wage reports will be considered as having been paid on the computation date.

RATE TABLE FOR EMPLOYERS WITH POSITIVE RESERVE ACCOUNTS

If the excess percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.00	0.86	2.110
0.86	1.17	2.028
1.17	1.48	1.947
1.48	1.79	1.866
1.79	2.10	1.785
2.10	2.41	1.710
2.41	2.72	1.628
2.72	3.04	1.547
3.04	3.35	1.466
3.35	3.65	1.385
3.65	3.97	1.310
3.97	4.29	1.228
4.29	4.60	1.147
4.60	4.91	1.066
4.91	5.22	0.985
5.22	5.53	0.910
5.53	5.84	0.828
5.84	6.15	0.747
6.15	6.47	0.666
6.47	6.77	0.585
6.77	7.08	0.510
7.08	7.40	0.428
7.40	7.71	0.347
7.71	8.02	0.266
8.02	8.33	0.185
8.33	8.64	0.110
8.64	8.95	0.028
8.95 and over		0.025

(2) If, on the computation date, the total of an employer's contributions is less than the total benefits charged to its account, its contribution rate for the following calendar year shall be determined by subtracting contributions from benefits charged and dividing the difference by the employer's average annual payroll. The resulting percentage will then be applied to the following rate table. Contributions paid by the end of the month following the computation date

and contributions paid within 30 days of notice of failure to file all required tax and wage reports will be considered as having been paid on the computation date.

RATE TABLE FOR EMPLOYERS
WITH DEFICIT RESERVE ACCOUNTS

If the deficit percentage:

Equals or Exceeds	But Is Less Than	The Contribution Rate Is (Percent)
0.0	0.5	2.15
0.5	1.5	2.35
1.5	2.5	2.55
2.5	3.5	2.75
3.5	4.5	2.95
4.5	5.5	3.15
5.5	6.5	3.35
6.5	7.5	3.55
7.5	8.5	3.75
8.5	9.5	3.95
9.5	10.5	4.15
10.5	11.5	4.35
11.5	12.5	4.55
12.5	13.5	4.75
13.5	14.5	4.95
14.5	15.5	5.15
15.5 and over		5.40

(f)(1) Subject to the provisions of paragraph (2) of this subsection, contribution rates for experience rated employers for the time periods:

(A) January 1, 2000, to December 31, 2000;

(B) January 1, 2001, to December 31, 2001;

(C) January 1, 2002, to December 31, 2002; and

(D) January 1, 2003, to December 31, 2003

shall not be imposed above the level of 1.0 percent of statutory contribution rates.

(2) The Governor shall have authority to suspend by executive order any future portion of the reduction in calculated rates provided for in paragraph (1) of this subsection in the event the Governor

determines, upon the recommendation of the Commissioner, that suspension of said reduction is in the best interests of the State of Georgia.

(Code 1981, § 34-8-155, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1996, p. 670, § 1; Ga. L. 1996, p. 693, § 2; Ga. L. 1999, p. 449, § 3; Ga. L. 1999, p. 521, § 3; Ga. L. 2002, p. 1119, § 4; Ga. L. 2005, p. 1200, § 4/HB 520; Ga. L. 2011, p. 390, § 2/HB 292.)

The 2011 amendment, effective May 11, 2011, substituted "December 31, 2016" for "December 31, 2011" in subsections (c) and (e).

34-8-156. State-wide Reserve Ratio; reduction in tax rate.

(a) A State-wide Reserve Ratio shall be computed as of June 30 of each year by dividing the balance in the trust fund, including accrued interest, by the total covered wages paid in the state during the previous calendar year. Any amount credited to the state's account under Section 903 of the Social Security Act, as amended, which has been appropriated for the expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the trust fund balance in computing the State-wide Reserve Ratio.

(b) For the period on or after January 1, 1990, but prior to January 1, 1995:

(1) When the State-wide Reserve Ratio, as computed above, is 3.3 percent or more for any calendar year, each employer who does not have a deficit reserve balance shall have its contribution rate at the time of computation credited by applying an overall reduction of the rate in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Reduction
3.3 percent	3.7 percent	40 percent
3.7 percent and over		60 percent

(2) When the State-wide Reserve Ratio, as calculated above, is less than 3.0 percent, there shall be an overall increase in the rate, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Increase
2.6 percent	3.0 percent	40 percent
Under 2.6 percent		60 percent

(c) For the period on or after January 1, 1995, but prior to January 1, 1997:

(1) When the State-wide Reserve Ratio, as computed above, is 3.3 percent or more for any calendar year, each employer who does not have a deficit reserve balance shall have its contribution rate at the time of computation credited by applying an overall reduction of the rate in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Reduction
3.3 percent	3.7 percent	40 percent
3.7 percent and over		50 percent

(2) When the State-wide Reserve Ratio, as calculated above, is less than 3.0 percent, there shall be an overall increase in the rate, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Increase
2.6 percent	3.0 percent	40 percent
Under 2.6 percent		50 percent

(d)(1) For the period on or after January 1, 1997, but prior to January 1, 1998:

(A) When the State-wide Reserve Ratio, as computed above, is 3.0 percent or more for any calendar year, each employer who does not have a deficit reserve balance shall have its contribution rate at the time of computation credited by applying an overall reduction of the rate in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Reduction
3.0 percent	3.6 percent	25 percent
3.6 percent and over		50 percent

(B) When the State-wide Reserve Ratio, as calculated above, is less than 2.6 percent, there shall be an overall increase in the rate, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Increase
1.8 percent	2.6 percent	25 percent
Under 1.8 percent		50 percent

(2) For the period on or after January 1, 1998, but prior to January 1, 1999:

(A) When the State-wide Reserve Ratio, as computed above, is 2.4 percent or more for any calendar year, each employer who does not have a deficit reserve balance shall have its contribution rate at the time of computation credited by applying an overall reduction of the rate in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Reduction
2.4 percent	2.7 percent	25 percent
2.7 percent and over		50 percent

(B) When the State-wide Reserve Ratio, as calculated above, is less than 2.1 percent, there shall be an overall increase in the rate, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Increase
1.8 percent	2.1 percent	25 percent
Under 1.8 percent		50 percent

(3) For the period on or after January 1, 1999, but prior to January 1, 2000:

(A) When the State-wide Reserve Ratio, as computed above, is 2.4 percent or more for any calendar year, each employer who does not have a deficit reserve balance shall have its contribution rate at the time of computation credited by applying an overall reduction of the rate in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Reduction
2.4 percent	2.7 percent	25 percent
2.7 percent and over		50 percent

(B) When the State-wide Reserve Ratio, as calculated above, is less than 2.0 percent, there shall be an overall increase in the rate, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Increase
1.8 percent	2.0 percent	25 percent
Under 1.8 percent		50 percent

(4) For the period on or after January 1, 2000:

(A) When the State-wide Reserve Ratio, as calculated above, is 2.4 percent or more for any calendar year, each employer who does not have a deficit reserve balance shall have its contribution rate at the time of computation credited by applying an overall reduction of the rate in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Reduction
2.4 percent	2.7 percent	25 percent
2.7 percent and over		50 percent

(B) Except for any year or portion of a year during which the provisions of paragraph (1) of subsection (f) of Code Section 34-8-155 apply, when the State-wide Reserve Ratio, as calculated above, is less than 1.7 percent, there shall be an overall increase in the rate, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155 in accordance with the following table:

If the State-wide Reserve Ratio:

Equals or Exceeds	But Is Less Than	Overall Increase
1.5 percent	1.7 percent	25 percent
1.25 percent	1.5 percent	50 percent
0.75 percent	1.25 percent	75 percent
Under 0.75 percent		100 percent

provided, however, that for the periods of January 1 through December 31, 2004; January 1 through December 31, 2005; and January 1 through December 31, 2006, the overall increase in the rate required under this subparagraph shall be suspended and the provisions of this subparagraph shall be null and void, except in the event the State-wide Reserve Ratio, as calculated above, is less than 1.00 percent on the computation date with respect to rates applicable to calendar year 2004, 2005, or 2006, then for each such year the Commissioner of Labor shall have the option of imposing an increase in the overall rate of up to 35 percent, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155; and provided, further, that for the periods of January 1 through December 31, 2007, January 1 through December 31, 2008, January 1 through December 31, 2009, January 1 through December 31, 2010, January 1 through December 31, 2011, and January 1 through December 31, 2012, the overall increase in the rate required under this subparagraph shall be suspended and the provisions of this subparagraph shall be null and void, except in the event the State-wide Reserve Ratio, as calculated above, is less than 1.25 percent on the computation date with respect to rates applicable to calendar year 2007, 2008, 2009, 2010, 2011, or 2012, then for each such year the Commissioner of

Labor shall have the option of imposing an increase in the overall rate of up to 50 percent, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155; and provided, further, that for the period of January 1 through December 31, 2013, and for each calendar year period thereafter, the overall increase in the rate required under this subparagraph shall be suspended and the provisions of this subparagraph shall be null and void, except in the event the State-wide Reserve Ratio, as calculated above, is less than 1.25 percent on the computation date with respect to rates applicable to calendar year 2013 or any calendar year thereafter, then for each such year the Commissioner of Labor shall have the option of imposing an increase in the overall rate of up to 50 percent, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155; provided, however, that if any funds borrowed by the Commissioner from the United States Treasury pursuant to Code Section 34-8-87 are unpaid or if the Unemployment Compensation Fund balance is less than $1 billion, then the Commissioner of Labor shall impose an increase in the overall rate of 50 percent, as of the computation date, for each employer whose rate is computed under a rate table in Code Section 34-8-155.

(e)(1) For any calendar year prior to January 1, 1999, with respect to which the State-wide Reserve Ratio shall equal or exceed 2.1 percent, as computed pursuant to the provisions of this Code section, contribution rates shall be further reduced for the succeeding calendar year by a percentage which shall be computed in the following manner:

(A) The dollar amount by which the Unemployment Trust Fund exceeds the dollar amount which equates to a State-wide Reserve Ratio of 2.1 percent shall be divided by the total of contributions collected attributable to wages paid during the preceding calendar year, excluding penalty and interest, as of the computation date as that term is defined in Code Section 34-8-28;

(B) The resulting percentage shall be used to reduce all experience rated contribution rates by that same percentage; provided, however, that the resulting reduction shall not reduce contribution rates below the level which will produce a contribution rate of 5.4 percent for maximum deficit reserve accounts. This reduction in contribution rates shall be valid for the succeeding calendar year only; and

(C) Accounts which are not eligible for a computed contribution rate as provided in Code Section 34-8-152 shall not receive the reduction in rates.

(2) For any calendar year on and after January 1, 1999, with respect to which the State-wide Reserve Ratio shall equal or exceed

2.0 percent, as computed pursuant to the provisions of this Code section, contribution rates shall be further reduced for the succeeding calendar year by a percentage which shall be computed in the following manner:

(A) The dollar amount by which the Unemployment Trust Fund exceeds the dollar amount which equates to a State-wide Reserve Ratio of 2.0 percent shall be divided by the total of contributions collected attributable to wages paid during the preceding calendar year, excluding penalty and interest, as of the computation date as that term is defined in Code Section 34-8-28;

(B) The resulting percentage shall be used to reduce all experience rated contribution rates by that same percentage; provided, however, that the resulting reduction shall not reduce contribution rates below the level which will produce a contribution rate of 5.4 percent for maximum deficit reserve accounts. This reduction in contribution rates shall be valid for the succeeding calendar year only; and

(C) Accounts which are not eligible for a computed contribution rate as provided in Code Section 34-8-152 shall not receive the reduction in rates.

(f) The computed rates after application of percentage reductions or increases will be rounded to the nearest one-hundredth of 1 percent. The Commissioner will give notice to each employer on any rate change by reason of the above provisions. (Code 1981, § 34-8-156, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1994, p. 640, § 2; Ga. L. 1996, p. 670, § 2; Ga. L. 1997, p. 831, § 1; Ga. L. 1998, p. 1501, §§ 3, 4, 5; Ga. L. 1999, p. 449, § 4; Ga. L. 1999, p. 521, § 4; Ga. L. 2002, p. 1119, § 5; Ga. L. 2003, p. 362, § 1; Ga. L. 2004, p. 1074, § 2; Ga. L. 2005, p. 1200, § 5/HB 520; Ga. L. 2006, p. 877, § 1/HB 1326; Ga. L. 2007, p. 394, § 2/HB 443; Ga. L. 2008, p. 324, § 34/SB 455; Ga. L. 2009, p. 139, § 3/HB 581; Ga. L. 2011, p. 390, § 3/HB 292; Ga. L. 2012, p. 950, § 2/HB 347.)

The 2009 amendment, effective April 21, 2009, in the ending undesignated paragraph of subparagraph (d)(4)(B), substituted "December 31, 2008, January 1 through December 31, 2009, January 1 through December 31, 2010, and January 1 through December 31, 2011," for "December 31, 2008, and January 1, through December 31, 2009," and substituted "2009, 2010, or 2011," for "or 2009," near the end.

The 2011 amendment, effective May 11, 2011, in subparagraph (d)(4)(B), in the proviso, deleted "and" following "December, 31, 2010,", inserted "and January 1 through December 31, 2012,", substituted "2010, 2011, or 2012" for "2010, or 2011", and substituted "50 percent" for "35 percent".

The 2012 amendment, effective May 2, 2012, added the language beginning "and provided, further" and ending "rate table in Code Section 34-8-155" at the end of subparagraph (d)(4)(B).

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly,

provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 92 (2012).

34-8-157. Regular benefits paid to be charged against experience rating account.

(a) Regular benefits paid with respect to all benefit years that begin on or after January 1, 1992, but prior to July 1, 2015, shall be charged against the experience rating account or reimbursement account of employers in the following manner:

(1) Benefits paid shall be charged to the account of the most recent employer, as that term is defined in Code Section 34-8-43, including benefits paid based upon insured wages which were earned to requalify following a period of disqualification as provided in Code Section 34-8-194;

(2)(A) Except as otherwise provided in paragraph (3) of this subsection, benefits charged to the account of an employer shall not exceed the amount of wages paid by such employer during the period beginning with the base period of the individual's claim and continuing through the individual's benefit year.

(B) Except as otherwise provided in paragraph (3) of this subsection, benefits shall not be charged to the account of an employer when an individual's overpayment is waived pursuant to Code Section 34-8-254.

(C) Except as otherwise provided in paragraph (3) of this subsection, for the purposes of calculating an employer's contribution rate, an account of an employer shall not be charged for benefits paid to an individual for unemployment that is directly caused by a presidentially declared natural disaster;

(3)(A) An employer shall respond in a timely and adequate manner to a notice of a claim filing or a written request by the department for information relating to a claim for benefits as specified in the rules or regulations prescribed by the Commissioner.

(B) Any violation of subparagraph (A) of this paragraph by an employer or an officer or agent of an employer absent good cause may result in the employer's account being charged for overpayment of benefits paid due to such violation even if the determination is later reversed; provided, however, that upon the finding of three violations of subparagraph (A) of this paragraph within a calendar year resulting in an overpayment of benefits, an employer's account shall be charged for any additional overpayment and shall not be relieved of such charges unless good cause is shown; and

(4) Benefits paid to individuals shall be charged against the Unemployment Trust Fund when benefits are paid but not charged against an employer's experience rating account as provided in this Code section.

(b)(1) Regular benefits paid with respect to all benefit years that begin on or after July 1, 2015, shall be charged against the experience rating account or reimbursement account of the most recent employer as defined in subsection (a) of Code Section 34-8-43, provided that:

(A) The most recent employer is a liable employer, as provided in Code Section 34-8-42; and

(B)(i) The most recent employer separated the individual from work under nondisqualifying conditions, or files the claim for the individual by submitting such reports as authorized by the Commissioner; or

(ii) The individual separated from the most recent employer under nondisqualifying conditions.

(2) Regular benefits to be charged against the experience rating account or reimbursement account of the most recent employer pursuant to paragraph (1) of this subsection shall be charged in the following manner:

(A) Benefits paid shall be charged to the account of the most recent employer as defined in Code Section 34-8-43, including those benefits paid based upon insured wages which were earned to requalify following a period of disqualification as provided in Code Section 34-8-194;

(B) Except as otherwise provided in subparagraph (E) of this paragraph, benefits charged to the account of an employer shall not exceed the amount of wages paid by such employer during the period beginning with the base period of the individual's claim and continuing though the individual's benefit year;

(C) Except as otherwise provided in subparagraph (E) of this paragraph, benefits shall not be charged to the account of an employer when an individual's overpayment is waived pursuant to Code Section 34-8-254;

(D) Except as otherwise provided in subparagraph (E) of this paragraph, for the purposes of calculating an employer's contribution rate, an account of an employer shall not be charged for benefits paid to an individual for unemployment that is directly caused by a presidentially declared natural disaster;

(E)(i) An employer shall respond in a timely and adequate manner to a notice of a claim filing or a written request by the

department for information relating to a claim for benefits as specified in the rules or regulations prescribed by the Commissioner.

(ii) Any violation of division (i) of this subparagraph by an employer or an officer or agent of an employer absent good cause may result in the employer's account being charged for overpayment of benefits paid due to such violation even if the determination is later reversed; provided, however, that upon the finding of three violations of division (i) of this subparagraph within a calendar year resulting in an overpayment of benefits, an employer's account shall be charged for any additional overpayment and shall not be relieved of such charges unless good cause is shown; and

(F) Benefits paid to individuals shall be charged against the Unemployment Trust Fund when benefits are paid but not charged against an employer's experience rating account as provided in this Code section or when the employer is not a liable employer as provided in Code Section 34-8-42.

(c)(1) Payments of extended benefits as provided in Code Section 34-8-197 shall be charged to an employer's experience rating account in the same proportion as regular benefits are charged, except an employer shall be charged for only 50 percent of its portion of the extended benefits paid for all weeks after the first week of extended benefits; provided, however, that benefits paid that are attributable to service in the employ of any governmental entity as described in subsection (h) of Code Section 34-8-35 shall be financed in their entirety by such governmental entity which is charged as provided in this Code section.

(2) As provided by 26 U.S.C. Section 3304, only 50 percent of extended benefits paid shall be charged to the individual's employers as described in paragraph (1) of this subsection. However, if the federal government does not reimburse the 50 percent for the first week of extended benefits paid, employers shall be charged 100 percent of such first week of extended benefits paid. When employers have been determined to be relieved from charges, such payments shall be charged against the Unemployment Trust Fund in the appropriate amount.

(d) The Commissioner shall by regulation provide for the notification of each employer of charges made against its account at intervals not less frequent than semiannually. The charges in such notification shall be binding upon each employer for all purposes unless the employer files a request for review and redetermination in writing. Such request must set forth the charges to which the employer objects and the basis

of the objection. The request must be made within 15 days of the prescribed notification. Upon such request being filed, the employer shall be granted an opportunity for a fair hearing. However, no employer shall have standing in any proceeding to contest the chargeability to its account of any benefit paid in accordance with a determination, redetermination, or decision pursuant to Articles 7 and 8 of this chapter, except upon the ground that the services upon which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination, or decision, or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified of the Commissioner's redetermination. The redetermination shall become final unless a petition for judicial review is filed within 15 days after notice of redetermination. Such notice shall be mailed or otherwise delivered to the employer's last known address. The petition for judicial review shall be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. In any proceeding under this Code section, the findings of the Commissioner as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Commissioner. The Commissioner may, after hearing such additional evidence, modify the determination and file such modified determination, together with a transcript of the additional record, with the court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under Articles 7 and 8 of this chapter and Chapter 9 of this title. An appeal may be taken from the decision of the Superior Court of Fulton County or the superior court of the county of residence of the petitioner to the Court of Appeals of Georgia in the same manner as is provided in civil cases. (Code 1981, § 34-8-157, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1992, p. 6, § 34; Ga. L. 1994, p. 640, § 3; Ga. L. 1995, p. 373, § 3; Ga. L. 2008, p. 324, § 34/SB 455; Ga. L. 2014, p. 730, § 2/HB 714; Ga. L. 2015, p. 830, § 2/HB 117.)

The 2014 amendment, effective April 24, 2014, in subsection (b), substituted "Except as otherwise provided in paragraph (3) of this subsection, benefits" for "Benefits" at the beginning of subparagraphs (b)(2)(A) and (b)(2)(C), substituted "Except as otherwise provided in paragraph (3) of this subsection" for "Notwithstanding any other provision of this subsection to the contrary" at the beginning of subparagraph (b)(2)(D), and substituted the present provisions of paragraph (b)(3) for the former provisions, which read: "An employer's account may be charged for benefits paid due to the employer's failure to respond in a timely manner to the notice of claim filing even if the determination is later reversed on appeal; and".

The 2015 amendment, effective May 6, 2015, rewrote subsections (a) and (b) and, in paragraph (c)(1), inserted "that" preceding "benefits".

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

34-8-159. Specific provisions for payments in lieu of contributions.

The payments in lieu of contributions as provided in Code Section 34-8-158 shall be made in accordance with the following provisions:

(1) **Date payment due.** Upon approval by the Commissioner, at the end of each calendar quarter or at the end of such other period as determined by the Commissioner, each organization or group of organizations shall be billed for payments in lieu of contributions charged to it during such quarter or other prescribed period in accordance with Code Section 34-8-158. Provisions applicable to contributing employers in Code Section 34-8-157 under which employers may not be charged do not apply to employers who make payments in lieu of contributions;

(2) **Payment to be made not later than 30 days after bill mailed.** The payment of any bill rendered under paragraph (1) of this Code section shall be made not later than 30 days after such bill was mailed to the last known address of the organization or was otherwise delivered to it unless there has been an application for review and redetermination in accordance with paragraph (4) of this Code section;

(3) **Payments made not to be deducted from remuneration of individuals.** Payments made by any governmental entity or nonprofit organization under this Code section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the governmental entity or nonprofit organization;

(4) **Amount specified in billing conclusive.** The amount due specified in any billing notice from the Commissioner pursuant to paragraph (1) of this Code section shall be conclusive unless, not later than 15 days after the billing notice was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the Commissioner, setting forth the grounds for such application or appeal. The Commissioner shall promptly review and reconsider the amount due specified in the billing notice and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive with respect to the organization unless, not later than 15 days after the redetermination was mailed to its last known address or otherwise delivered, the organi-

zation files an appeal, setting forth the grounds for the appeal. Proceedings on appeal from the amount of a billing notice rendered under this Code section or a redetermination of such amount shall be in accordance with regulations as prescribed by the Commissioner; and

(5) **Past due payments.** Past due payments in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Code Sections 34-8-165 and 34-8-166, apply to past due contributions. Interest or penalties shall not accrue with respect to any portion of the amount billed on which the employer prevails in the redetermination, but shall continue to accrue as to any portion of the amount billed on which the employer does not prevail. (Code 1981, § 34-8-159, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2015, p. 830, § 5/HB 117.)

The 2015 amendment, effective May 6, 2015, deleted "subsection (a) of" preceding "Code Section 34-8-157" in the middle of the last sentence of paragraph (1).

34-8-164. Applications for adjustment or refund.

Applications for an adjustment or a refund of contributions, payments in lieu of contributions, or interest thereon, shall be submitted no later than three years from the date such amounts were assessed. Applications must be in writing. The Commissioner shall determine what amounts, if any, were erroneously collected. Adjustments shall be made against subsequent payments. Refunds will be issued, without interest thereon, when adjustments cannot be made. At the option of the Commissioner, the Commissioner may make any adjustments or refunds deemed appropriate for any amounts erroneously collected where no written request for a refund or an adjustment has been received, provided such amounts were assessed within the last seven years. Amounts shall be refunded from the fund into which they were deposited. (Code 1981, § 34-8-164, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2015, p. 830, § 3/HB 117.)

The 2015 amendment, effective May 5, 2015, substituted "an adjustment or a refund" for "adjustment or refund" near the beginning of the first sentence; and, in the sixth sentence, substituted "make any" for "initiate any", inserted "for any amounts erroneously collected", substituted "a refund or an adjustment" for "refund or adjustment", and substituted "seven years" for "three years".

34-8-166. Interest on delinquent contribution payments; waiver; reports.

(a) Contributions unpaid on the due date established by the Commissioner shall bear interest at the rate of 1.5 percent per month or any

fraction of a month. Interest shall continue to accrue until all amounts due, including interest, are received by the Commissioner.

(b) The Commissioner may waive the collection of any accrued interest when it is reasonably determined that the delay in payment of contributions was due to the action or inaction of the department.

(c) The Commissioner shall file an annual report with the Attorney General, the members of the Senate Insurance and Labor Committee, and the members of the House Committee on Industry and Labor stating the number of cases and the total amount of interest which is waived pursuant to this Code section. The Commissioner shall retain on file for five years a detailed statement listing the names of the employers whose interest was waived, the amount of interest waived, the number of cases, and the specified reasons for each waiver under this Code section. This statement shall be available for review by members of the General Assembly, the Attorney General, the state accounting officer, and the state auditor. (Code 1981, § 34-8-166, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2005, p. 694, § 33/HB 293; Ga. L. 2013, p. 141, § 34/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "House Committee on Industry and Labor" for "House Industrial Relations Committee" in the middle of the first sentence of subsection (c).

34-8-173. Release or subordination of property subject to lien; authority to settle and compromise payment of contributions; annual reports.

(a) The Commissioner may release or subordinate all or any portion of the property subject to any lien obtained under provisions of this chapter if the Commissioner determines that the contributions, interest, and penalties are sufficiently secured by a lien on other property or through other security or that the release, partial release, or subordination of such lien will not endanger or jeopardize the collection of amounts due.

(b)(1) The Commissioner is authorized to settle and compromise any payment of contributions and interest thereon, including penalty, or any tax execution, where there is doubt as to the liability of the employer or where there is doubt as to the collectability and the settlement or compromise is in the best interest of the state. The Commissioner may make all reasonable rules and regulations necessary to effectuate the purpose of this Code section.

(2) The Commissioner shall file an annual report with the Attorney General, the members of the Senate Insurance and Labor Committee, and the members of the House Committee on Industry

and Labor, which report shall state the number of cases and the total amount of debt which is compromised under this Code section. The Commissioner shall retain on file for five years a detailed statement listing the names of the employers whose debt was compromised, the amount of debt compromised, the number of cases, and the specified reasons for each debt compromise under this Code section. This statement shall be available for review by members of the General Assembly, the Attorney General, the state accounting officer, and the state auditor. (Code 1981, § 34-8-173, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2005, p. 694, § 34/HB 293; Ga. L. 2013, p. 141, § 34/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "House Committee on Industry and Labor" for "House Industrial Relations Committee" in the middle of the first sentence of paragraph (b)(2).

Editor's notes. — Ga. L. 2013, p. 141, § 34/HB 79, which amended this Code section, purported to amend subsection (c) of this Code section but actually amended paragraph (b)(2).

34-8-177. Procedure for collecting delinquent contribution payments from public employers.

Should any department or political subdivision of the state, any instrumentality of a political subdivision of the state, or any instrumentality of one or more of the foregoing become more than 120 days delinquent in contributions or payments in lieu of contributions due to the Unemployment Compensation Fund, the Department of Labor shall certify to the Office of the State Treasurer the amount due. The Office of the State Treasurer shall transfer the amount due to the Department of Labor from funds it has available for distribution to the respective department or political subdivision of the state, instrumentality of a political subdivision of the state, or instrumentality of one or more of the foregoing. The certification shall be signed by the Commissioner and shall be conclusive proof of the delinquency. The Commissioner shall mail a copy of the certification to the delinquent public employer on the date of transmittal to the Department of Administrative Services. Should the public employer wish to appeal the Commissioner's decision, it shall so notify the Commissioner within 15 days from the date the certification is mailed to the public employer. The Commissioner shall, upon receipt of the notice, request the Attorney General to appoint an independent attorney as an administrative hearing officer to hear all issues involved and render a decision. Should the public employer or the Commissioner contest the administrative hearing officer's decision, an appeal may be filed, within 30 days after the decision of the administrative hearing officer has been mailed, in the superior court of the county in which the decision was rendered. The Attorney General shall represent the Commissioner in any such mat-

ters appealed. (Code 1981, § 34-8-177, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the first and second sentences of this Code section.

ARTICLE 6

ADMINISTRATIVE ASSESSMENTS

Editor's notes. — Code Section 34-8-185 provides that: "This article shall stand repealed in its entirety on December 31, 2016."

34-8-180. (Repealed effective December 31, 2016) Creation of administrative assessment upon all wages; assessments due quarterly.

(a) For the periods on or after April 1, 1987, but on or before January 1, 2000, there is created an administrative assessment of .06 percent to be assessed upon all wages, as defined in Code Section 34-8-49, except wages of the following employers:

(1) Those employers who have elected to make payments in lieu of contributions as provided by Code Section 34-8-158 or who are liable for the payment of contributions as provided in said Code section; or

(2) Those employers who, by application of the State-wide Reserve Ratio as provided in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the maximum deficit reserve rate.

(b) For the periods on or after January 1, 2000, but on or before December 31, 2016, there is created an administrative assessment of 0.08 percent to be assessed upon all wages as defined in Code Section 34-8-49, except the wages of:

(1) Those employers who have elected to make payments in lieu of contributions as provided by Code Section 34-8-158 or who are liable for the payment of contributions as provided in said Code section; or

(2) Those employers who, by application of the State-wide Reserve Ratio as provided in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the maximum deficit reserve rate.

(c) Assessments pursuant to this Code section shall become due and shall be paid by each employer and must be reported on the employer's quarterly tax and wage report according to such rules and regulations as the Commissioner may prescribe. The assessments provided in this Code section shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any

deduction in violation of this subsection is unlawful. (Code 1981, § 34-8-180, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1999, p. 449, § 5; Ga. L. 1999, p. 521, § 5; Ga. L. 2005, p. 1200, § 6/HB 520; Ga. L. 2011, p. 390, § 4/HB 292.)

The 2011 amendment, effective May 1, 2011, substituted "December 31, 2016" for "December 31, 2011" in the introductory paragraph of subsection (b).

Editor's notes. — See the editor's note following the article heading as to the repeal of this Code section.

34-8-181. (Repealed effective December 31, 2016) Additional assessment for new or newly covered employer.

(a) For the periods on or after April 1, 1987, but on or before December 31, 1999, in addition to the rate paid under Code Section 34-8-151, each new or newly covered employer shall pay an administrative assessment of .06 percent of wages payable by it with respect to employment during each calendar year until it is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Section 34-8-158.

(b) For the periods on or after January 1, 2000, but on or before December 31, 2016, in addition to the rate paid under Code Section 34-8-151, each new or newly covered employer shall pay an administrative assessment of 0.08 percent of wages payable by it with respect to employment during each calendar year until it is eligible for a rate calculation based on experience as defined in this chapter, except as provided in Code Section 34-8-158. (Code 1981, § 34-8-181, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1999, p. 449, § 6; Ga. L. 1999, p. 521, § 6; Ga. L. 2005, p. 1200, § 7/HB 520; Ga. L. 2011, p. 390, § 5/HB 292.)

The 2011 amendment, effective May 11, 2011, substituted "December 31, 2016" for "December 31, 2011" in subsection (b).

Editor's notes. — See the editor's note following the article heading as to the repeal of this Code section.

34-8-182. (Repealed effective December 31, 2016) Authority to collect administrative assessment and deposit funds in clearing account; appropriation of funds.

Editor's notes. — See the editor's note following the article heading as to the repeal of this Code section.

34-8-183. (Repealed effective December 31, 2016) Authority to promulgate rules and regulations.

Editor's notes. — See the editor's note following the article heading as to the repeal of this Code section.

34-8-184. (Repealed effective December 31, 2016) Article administered in accordance with corresponding provisions of chapter; Commissioner's authority.

Editor's notes. — See the editor's note following the article heading as to the repeal of this Code section.

34-8-185. (Repealed effective December 31, 2016) Repealer.

This article shall stand repealed in its entirety on December 31, 2016. (Code 1981, § 34-8-185, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1995, p. 373, § 5; Ga. L. 1999, p. 449, § 7; Ga. L. 1999, p. 521, § 7; Ga. L. 2005, p. 1200, § 8/HB 520; Ga. L. 2011, p. 390, § 6/HB 292.)

The 2011 amendment, effective May 11, 2011, substituted "December 31, 2016" for "December 31, 2011" in this Code section.

ARTICLE 7

BENEFITS

34-8-193. Determination of weekly benefit amount.

(a) The weekly benefit amount of an individual's claim shall be that amount computed by dividing the two highest quarters of wages paid in the base period by 42. Any fraction of a dollar shall then be disregarded. Wages must have been paid in at least two quarters of the base period and total wages in the base period must equal or exceed 150 percent of the highest quarter base period wages. For claims that fail to establish entitlement due to failure to meet the 150 percent requirement, an alternative computation shall be made. In such event, the weekly benefit amount shall be computed by dividing the highest single quarter of base period wages paid by 21. Any fraction of a dollar shall then be disregarded. Under this alternative computation, wages must have been paid in at least two quarters of the base period and total base period wages must equal or exceed 40 times the weekly benefit amount. Regardless of the method of computation used, wages must have been paid for insured work, as defined in Code Section 34-8-41.

(b) Weekly benefit amount entitlement as computed in this Code section shall be no less than $27.00 per week for benefit years beginning on or after July 1, 1983; provided, however, that for benefit years beginning on or after July 1, 1987, when the weekly benefit amount, as computed, would be more than $26.00 but less than $37.00, the individual's weekly benefit amount will be $37.00, and no weekly benefit amount shall be established for less than $37.00; provided, further, that for benefit years beginning on or after July 1, 1997, when

the weekly benefit amount, as computed, would be more than $26.00 but less than $39.00, the individual's weekly benefit amount will be $39.00, and no weekly benefit amount shall be established for less than $39.00; provided, further, that for benefit years beginning on or after July 1, 2002, when the weekly benefit amount, as computed, would be more than $26.00 but less than $40.00, the individual's weekly benefit amount will be $40.00, and no weekly benefit amount shall be established for less than $40.00; provided, further, that for benefit years beginning on or after July 1, 2005, when the weekly benefit amount, as computed, would be more than $26.00 but less than $42.00, the individual's weekly benefit amount will be $42.00, and no weekly benefit amount shall be established for less than $42.00; provided, further, that for benefit years beginning on or after July 1, 2007, when the weekly benefit amount, as computed, would be more than $26.00 but less than $44.00, the individual's weekly benefit amount will be $44.00, and no weekly benefit amount shall be established for less than $44.00.

(c) Weekly benefit amount entitlement as computed in this Code section shall not exceed these amounts for the applicable time period:

(1) For claims filed on or after July 1, 1990, but before July 1, 1994, the maximum weekly benefit amount shall not exceed $185.00;

(2) For claims filed on or after July 1, 1994, but before July 1, 1995, the maximum weekly benefit amount shall not exceed $195.00;

(3) For claims filed on or after July 1, 1995, but before July 1, 1996, the maximum weekly benefit amount shall not exceed $205.00;

(4) For claims filed on or after July 1, 1996, but before July 1, 1997, the maximum weekly benefit amount shall not exceed $215.00;

(5) For claims filed on or after July 1, 1997, but before July 1, 1998, the maximum weekly benefit amount shall not exceed $224.00;

(6) For claims filed on or after July 1, 1998, but before July 1, 1999, the maximum weekly benefit amount shall not exceed $244.00;

(7) For claims filed on or after July 1, 1999, but before July 1, 2000, the maximum weekly benefit amount shall not exceed $264.00;

(8) For claims filed on or after July 1, 2000, but before July 1, 2001, the maximum weekly benefit amount shall not exceed $274.00;

(9) For claims filed on or after July 1, 2001, but before July 1, 2002, the maximum weekly benefit amount shall not exceed $284.00;

(10) For claims filed on or after July 1, 2002, but before July 1, 2003, the maximum weekly benefit amount shall not exceed $295.00;

(11) For claims filed on or after July 1, 2003, but before July 1, 2005, the maximum weekly benefit amount shall not exceed $300.00;

(12) For claims filed on or after July 1, 2005, but before July 1, 2006, the maximum weekly benefit amount shall not exceed $310.00;

(13) For claims filed on or after July 1, 2006, but before July 1, 2008, the maximum weekly benefit amount shall not exceed $320.00; and

(14) For claims filed on or after July 1, 2008, the maximum weekly benefit amount shall not exceed $330.00.

(d)(1) Except as otherwise provided in this subsection, the maximum benefits payable to an individual in a benefit year shall be the lesser of:

(A) Fourteen times the weekly benefit amount, if this state's average unemployment rate is at or below 6.5 percent, with an additional weekly amount added for each 0.5 percent increment in this state's average unemployment rate above 6.5 percent up to a maximum of 20 times the weekly benefit amount if this state's average unemployment rate equals or exceeds 9 percent; or

(B) One-fourth of the base period wages.

If the amount computed is not a multiple of the weekly benefit amount, the total will be adjusted to the nearest multiple of the weekly benefit amount. The duration of benefits shall be extended in accordance with Code Section 34-8-197.

(2) In addition to and subsequent to payment of all benefits otherwise allowed under paragraph (1) of this subsection whenever the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 11 percent, weekly unemployment compensation shall be payable under this subsection to any individual who is unemployed, has exhausted all rights to regular unemployment compensation under the provisions of Article 7 of this chapter, and is enrolled and making satisfactory progress, as determined by the Commissioner, in a training program approved by the department, or in a job training program authorized under the Workforce Investment Act of 1998, Public Law 105-220, and not receiving similar stipends or other training allowances for nontraining costs. Each such training program approved by the department or job training program authorized under the Workforce Investment Act of 1998 shall prepare individuals who have been separated from a declining occupation, as designated by the department from time to time, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of

employment, for entry into a high-demand occupation, as designated by the department from time to time. The amount of unemployment compensation payable under this subsection to an individual for a week of unemployment shall be equal to the individual's weekly benefit amount for the individual's most recent benefit year less deductible earnings, if any. The total amount of unemployment compensation payable under this subsection to any individual shall be equal to 14 times the individual's weekly benefit amount for the individual's most recent benefit year, if this state's average unemployment rate is at or below 6.5 percent, with an additional weekly amount added for each 0.5 percent increment in this state's average unemployment rate above 6.5 percent up to a maximum of 20 times the weekly benefit amount if this state's average unemployment rate equals or exceeds 9 percent. The provisions of subsection (d) of Code Section 34-8-195 shall apply to eligibility for benefits under this subsection. Except when the result would be inconsistent with other provisions of this subsection, all other provisions of Article 7 of this chapter shall apply to the administration of the provisions of this subsection.

(3) As used in this subsection, the term "state's average unemployment rate" means the average of the adjusted state-wide unemployment rates as published by the department for the time periods of April 1 through April 30 and October 1 through October 31. The average of the adjusted state-wide unemployment rates for the time period of April 1 through April 30 shall be effective on and after July 1 of each year and shall be effective through December 31. The average of the adjusted state-wide unemployment rates for the time period of October 1 through October 31 shall be effective on and after January 1 of each year and shall be effective through June 30.

(e)(1) An otherwise eligible individual shall be paid the weekly benefit amount, less gross earnings in excess of $30.00, payable to the individual applicable to the week for which benefits are claimed. Such remaining benefit, if not a multiple of $1.00, shall be computed to the nearest multiple of $1.00. Earnings of $30.00 or less will not affect entitlement to benefits. For the purpose of this subsection, jury duty pay shall not be considered as earnings.

(2) For claims filed on or after July 1, 2002, an otherwise eligible individual shall be paid the weekly benefit amount, less gross earnings in excess of $50.00, payable to the individual applicable to the week for which benefits are claimed. Such remaining benefit, if not a multiple of $1.00, shall be computed to the nearest multiple of $1.00. Earnings of $50.00 or less will not affect entitlement to benefits. For the purpose of this paragraph, jury duty pay shall not be considered as earnings.

(f)(1) The amount of unemployment compensation payable to an individual for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week. Such remaining benefit, if not a multiple of $1.00, shall be computed to the nearest multiple of $1.00.

(2) The requirements of this subsection shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if:

(A) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained or contributed to by a base-period employer or chargeable employer as determined under applicable law; and

(B) Payments for services performed for such employer by the individual after the beginning of the base period affect eligibility for or increase the amount of such pension, retirement or retired pay, annuity, or similar payment, except in the case of pensions paid under the federal Social Security Act, the Railroad Retirement Act of 1974, or the corresponding provisions of prior law.

(3) The Commissioner shall take into consideration the amount contributed by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment and shall limit such reduction based on the percent share contributed by such individual. An individual who, while working, contributed 50 percent or more toward such plan shall not be subject to a reduction in the weekly benefit amount of the claim.

(g) Between the filing of one benefit year claim and the filing of another benefit year claim, an individual must have performed services in bona fide employment and earned insured wages for such services. These wages for insured work must equal or exceed ten times the weekly benefit amount of the new claim in order to establish entitlement.

(h) The wage credits and benefit rights of persons who entered the armed services of the United States during a national emergency are preserved for the period of their actual service and six months thereafter in accordance with regulations of the Commissioner. (Code 1981, § 34-8-193, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1994, p. 640, § 4; Ga. L. 1996, p. 670, § 3; Ga. L. 1997, p. 831, §§ 2, 3; Ga. L. 1998, p. 1501, § 6; Ga. L. 1999, p. 449, § 8; Ga. L. 1999, p. 521, § 8; Ga. L. 2002, p. 1119, § 6; Ga. L. 2005, p. 1200, § 9/HB 520; Ga. L. 2007, p. 394,

§ 3/HB 443; Ga. L. 2008, p. 324, § 34/SB 455; Ga. L. 2009, p. 139, § 6/HB 581; Ga. L. 2012, p. 950, § 3/HB 347; Ga. L. 2014, p. 730, § 3/HB 714.)

The 2009 amendment, effective April 21, 2009, in subsection (d), designated the existing provisions as paragraph (d)(1), substituted "Except as otherwise provided in this subsection, the" for "The" at the beginning of paragraph (d)(1), and added paragraph (d)(2).

The 2012 amendment, effective July 1, 2012, substituted the present provisions of subparagraph (d)(1) for the former provisions, which read: "Except as otherwise provided in this subsection, the maximum benefits payable to an individual in a benefit year shall be the lesser of 26 times the weekly benefit amount or one-fourth of the base period wages. If the amount computed is not a multiple of the weekly benefit amount, the total will be adjusted to the nearest multiple of the weekly benefit amount. The duration of benefits shall be extended in accordance with Code Section 34-8-197."; in paragraph (d)(2), in the fourth sentence, substituted "14 times" for "at least 26 times", and added the language beginning ", if this state's average" and ending "exceeds 9 percent" at the end; and added paragraph (d)(3).

The 2014 amendment, effective April 24, 2014, substituted "whenever the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 11 percent" for "and without restriction with respect to an individual's benefit year, for claims filed on or after January 1, 2010" near the middle of the first sentence of paragraph (d)(2).

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 92 (2012). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

JUDICIAL DECISIONS

Department failed to prove fraud. — Trial court erred by failing to conclude that it was not proven that a claimant knowingly underreported income in order to obtain unemployment benefits because while the evidence may have established that the claimant was less than diligent in monitoring deposits and ascertaining the income received, such conduct was an insufficient basis for imposing fraud penalties pursuant to O.C.G.A. § 34-8-255. Charles v. Butler, 331 Ga. App. 336, 771 S.E.2d 43 (2015).

34-8-194. Grounds for disqualification of benefits.

An individual shall be disqualified for benefits:

(1)(A) For the week or fraction thereof in which the individual has filed an otherwise valid claim for benefits after such individual has left the most recent employer voluntarily without good cause in connection with the individual's most recent work.

(B) Good cause in connection with the individual's most recent work shall be determined by the Commissioner according to the circumstances in the case; provided, however, that the following

circumstances shall be deemed to establish such good cause and the employer's account shall not be charged for any benefits paid out to an individual who leaves an employer:

(i) To accompany a spouse who has been reassigned from one military assignment to another; or

(ii) Due to family violence verified by reasonable documentation demonstrating that:

(I) Leaving the employer was a condition of receiving services from a family violence shelter;

(II) Leaving the employer was a condition of receiving shelter as a resident of a family violence shelter; or

(III) Such family violence caused the individual to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or the safety of any member of the claimant's immediate family.

For purposes of this subparagraph, the term "family violence" shall have the same meaning as in Code Section 19-13-1 and the term "family violence shelter" shall have the same meaning as in Code Section 19-13-20.

(C) To requalify following a disqualification, an individual must secure subsequent employment for which the individual earns insured wages equal to at least ten times the weekly benefit amount of the claim and then becomes unemployed through no fault on the part of the individual.

(D) When voluntarily leaving an employer, the burden of proof of good cause in connection with the individual's most recent work shall be on the individual.

(E) Benefits shall not be denied under this paragraph to an individual for separation from employment pursuant to a labor management contract or agreement or pursuant to an established employer plan, program, policy, layoff, or recall which permits the individual, because of lack of work, to accept a separation from employment;

(2)(A) For the week or fraction thereof in which such individual has filed an otherwise valid claim for benefits after the individual has been discharged or suspended from work with the most recent employer for failure to obey orders, rules, or instructions or for failure to discharge the duties for which the individual was employed as determined by the Commissioner according to the circumstances in the case. To requalify following a disqualification, an individual must secure subsequent employment for which the

individual earns insured wages equal to at least ten times the weekly benefit amount of the claim and then becomes unemployed through no fault on the part of the individual. Notwithstanding the foregoing, in the Commissioner's determination the burden of proof of just discharge or suspension for cause as set forth shall be on the employer and the presumption shall be with the employee; provided, however, that:

(i) An individual shall secure employment and show to the satisfaction of the Commissioner that such individual has performed services in bona fide employment and earned insured wages equal to at least 12 times the weekly benefit amount of the claim and has lost that job through no fault on the part of such individual, if it is determined by the Commissioner that the individual has been discharged for cause by the most recent employer for one or more of the following reasons:

(I) Intentional conduct on the premises of the employer or while on the job which results in a physical assault upon or bodily injury to the employer, fellow employees, customers, patients, bystanders, or the eventual consumer of products; or

(II) Intentional conduct that results in the employee's being discharged for, and limited to, the following: theft of property, goods, or money valued at $100.00 or less; and

(ii) An individual shall secure employment and show to the satisfaction of the Commissioner that he or she has performed services in bona fide employment and earned insured wages equal to at least 16 times the weekly benefit amount of the claim if it is determined by the Commissioner that the individual has been discharged for cause by the most recent employer for one or more of the following reasons:

(I) Intentional conduct by the employee which results in property loss or damages amounting to $2,000.00 or more; or

(II) Intentional conduct that results in the employee's being discharged for, and limited to, the following: theft of property, goods, or money valued at over $100.00, sabotage, or embezzlement.

(B) An individual shall not be disqualified for benefits under subparagraph (A) of this paragraph if, based on the rules and regulations promulgated by the Commissioner, the Commissioner determines:

(i) The individual made a good faith effort to perform the duties for which hired but was simply unable to do so;

(ii) The individual did not intentionally fail or consciously neglect to perform his or her job duties;

(iii) The discharge occurred because of absenteeism and the absences were caused by illness of the claimant or a family member, unless the claimant has without justification failed to notify the employer or the absence for such illness which led to discharge followed a series of absences, the majority of which were attributable to fault on the part of the claimant in direct violation of the employer's attendance policy and regarding which the claimant has been advised in writing, prior to any of the absences, that unemployment benefits may be denied due to such violations of the employer's policy on attendance; provided, however, that no waiver of an employee's rights under the federal Family and Medical Leave Act of 1993, as amended, or any other applicable state or federal law shall be construed under this division;

(iv) The discharge occurred as a violation of the employer's rule of which the claimant was not informed by having been made aware thereof by the employer or through common knowledge. Consistency of prior enforcement shall be taken into account as to the reasonableness or existence of the rule and such rule must be lawful and reasonably related to the job environment and job performance; or

(v) Except for activity requiring disqualification under paragraph (4) of this Code section, the employee was exercising a protected right to protest against wages, hours, working conditions, or job safety under the federal National Labor Relations Act or other laws.

(C) For the week or fraction thereof in which such individual has filed an otherwise valid claim for benefits after the individual has been discharged or suspended for violation of the employer's drug-free workplace policy as determined by the Commissioner according to the circumstances in the case. To requalify following a disqualification under this subparagraph, an individual must secure subsequent employment for which the individual earns insured wages equal to at least ten times the weekly benefit amount of the claim and then become unemployed through no fault on the part of the individual. Notwithstanding the foregoing, in the Commissioner's determination the burden of proof of just discharge or suspension for cause as set forth in this subparagraph shall be on the employer and the presumption of eligibility shall be with the employee; provided, however, that in cases where a drug or alcohol test is utilized to prove a violation of the employer's drug-free workplace policy:

(i) The employer's burden of proof of just discharge or suspension shall be presumed met if the individual fails a drug screening test which is required by terms of the employer's drug-free workplace policy and said policy complies with the provisions of Article 11 of Chapter 9 of this title, other substantially equivalent or more stringent standards established by federal law or regulations, or with rules and regulations prescribed by the Commissioner;

(ii) The laboratory test results, including but not limited to, documentation of the chain of custody, methodology, and the accuracy of the drug screening test shall be admissible and self-authenticating in an administrative hearing conducted by the Commissioner with respect to a disputed claim for unemployment benefits under this chapter, and such evidence shall create a rebuttable presumption that the individual violated the employer's drug-free workplace policy; provided, however, that any other evidence relating to the issue of eligibility and the provisions of this subparagraph may be received in person or by telecommunications at the hearing; and

(iii) Laboratory test results submitted by the individual, including but not limited to documentation of the chain of custody, methodology, and the accuracy of the drug screening test shall be admissible and self-authenticating in an administrative hearing conducted by the Commissioner with respect to a disputed claim for unemployment benefits under this chapter;

(3)(A) If, after the claimant has filed an otherwise valid claim for benefits, the claimant has failed without good cause either to apply for available, suitable work when so directed by an employment office or the Commissioner or to accept suitable work when offered to the claimant by any employer. Such disqualification shall continue until he or she has secured subsequent employment for which the individual has earned insured wages equal to at least ten times the weekly benefit amount of the claim and has lost that job through no fault on the part of the individual.

(B) In determining whether or not any work is suitable for an individual, the Commissioner shall consider the degree of risk involved to his or her health, safety, and morals; his or her physical fitness and prior training; his or her experience and prior earnings; his or her length of unemployment and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence. The length of unemployment shall be given full consideration and, after an adjustment period, the claimant must accept work involving less competence and at a lower remuneration. If a claimant has received ten weeks

of benefits during his or her current period of unemployment, no work otherwise suitable shall be considered unsuitable because of prior training, experience, prior earnings, or level of compensation, provided such compensation is equal to or exceeds 66 percent of the claimant's highest calendar quarter base period earnings; provided, however, that such compensation must be equal to or greater than the minimum wage established by federal or state laws.

(C) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work:

(i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) If the wages, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; or

(iii) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(4) For any week with respect to which the Commissioner finds that his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed. If, in any case, separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this paragraph, be deemed to be a separate factory, establishment, or other premises. This paragraph shall not apply if it is shown to the satisfaction of the Commissioner that:

(A) He or she is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work;

(B) He or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; or

(C) A lockout has occurred following the expiration of the most recent working agreement without any offer of or refusal to continue that agreement during continued negotiations for a new agreement acceptable to employer and employee.

When a stoppage of work due to a labor dispute ceases and operations are resumed at the factory, establishment, or other premises at which

the employee is or was last employed but the employee has not been restored to such last employment, the employee's disqualification for benefits under this paragraph shall be deemed to have ceased at such time as the Commissioner shall determine such stoppage of work to have ceased and such operations to have been resumed. Benefits shall not be paid for any week during which the employee is engaged in picketing or is a participant in a picket line at the factory, establishment, or other premises at which the employee is or was last employed even though the stoppage of work shall have ceased and operations have been resumed;

(5) For any week with respect to which the employee is receiving or has received remuneration in the form of:

(A) Wages in lieu of notice, terminal leave pay, severance pay, separation pay, or dismissal payments or wages by whatever name, regardless of whether the remuneration is voluntary or required by policy or contract; provided, however, such remuneration shall only affect entitlement if the remuneration for such week exceeds the individual's weekly benefit amount. Remuneration for accrued but unused annual leave, vacation pay, sick leave, or payments from employer funded supplemental unemployment plans, pension plans, profit-sharing plans, deferred compensation, or stock bonus plans or seniority buyback plans shall not affect entitlement. In the case of lump sum payments or periodic payments which are less than the individual's weekly wage, such payments shall be prorated by weeks on the basis of the most recent weekly wage of the individual for a standard work week; or

(B) Compensation for temporary partial or temporary total disability under the workers' compensation law of any state or under a similar law of the United States;

(6) For any week with respect to which he or she has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States; or

(7) If while attending a training course as provided in Code Section 34-8-195, he or she voluntarily ceases attending such course without good cause. Such disqualification shall continue pursuant to the provisions of paragraph (1) of this Code section. However, if any individual is separated from training approved under Code Section 34-8-195 due to the individual's own failure to abide by rules of the training facility, he or she shall be disqualified for benefits under the provisions of paragraph (2) of this Code section. (Code 1981, § 34-8-194, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1996, p. 693, § 4; Ga. L. 2005, p. 219, § 1/HB 404; Ga. L. 2005, p. 1200, § 9A/HB 520; Ga. L. 2015, p. 830, § 4/HB 117.)

The 2015 amendment, effective May 6, 2015, rewrote paragraph (1).

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

JUDICIAL DECISIONS

Analysis

General Consideration

Good faith effort to perform. — Because disqualification of unemployment compensation benefits requires deliberate, conscious fault by the employee, an employee's bona fide effort to comply with an employer's orders is not consistent with a finding of fault. Johnson v. Butler, 323 Ga. App. 743, 748 S.E.2d 111 (2013).

Inadmissible hearsay only evidence of disqualification. — Decision denying unemployment benefits to a discharged claimant under O.C.G.A. § 34-8-194 was reversed on appeal because the only evidence of the alleged violation of the employer's policy came by way of a patient's e-mail, which was inadmissible hearsay since the patient did not testify at the hearing. Robinson v. Butler, 319 Ga. App. 633, 737 S.E.2d 731 (2013).

Good faith effort to perform is standard. — Individual shall not be disqualified for unemployment compensation benefits if, based on the rules and regulations, the individual made a good faith effort to perform the duties for which hired but was simply unable to do so, and the individual did not intentionally fail or consciously neglect to perform the job duties. Johnson v. Butler, 323 Ga. App. 743, 748 S.E.2d 111 (2013).

Disqualification

Disqualification because of fault.

Superior court did not err by failing to apply O.C.G.A. § 34-8-194(2)(B)(ii) and (iii) because the employee, at the very least, consciously neglected to perform the employee's duties; despite the fact that the employee was able to perform the employee's job duties up until the employee was diagnosed with influenza, the evidence showed that the employee had still failed to complete support notes for over 50 percent of the employee's caseload. McCauley v. Thurmond, 311 Ga. App. 636, 716 S.E.2d 733 (2011).

Employee's failure to communicate. — Trial court erred in reversing the Department of Labor's denial of unemployment benefits as the employee was terminated for failure to improve the employee's communication with the staff and failure to provide the new lead mammographer with all relevant information for the new lead to perform the employee's job effectively, despite being counseled to do so. DeKalb Med. Ctr. v. Whittley, 327 Ga. App. 503, 759 S.E.2d 579 (2014).

Schoolteachers' failure to pass teacher certification tests, etc.

Decision denying a teacher unemployment compensation was reversed on appeal because the teacher's failure to pass an exam required as a condition of employment after taking the exam eight times was not due to any conscious neglect or deliberate malfeasance which would have justified disqualifying the teacher from receiving benefits. Johnson v. Butler, 323 Ga. App. 743, 748 S.E.2d 111 (2013).

Failure to obey employer's rules.

Because there was some evidence to support an administrative hearing officer's conclusion that an employee failed to obey an employer's orders, rules, or instructions in dealing with a patient, and was therefore disqualified from receiving unemployment benefits under O.C.G.A. § 34-8-194(2)(A), the trial court erred in reversing the board of review's affirmance of that decision. MCG Health, Inc. v. Whitfield, 302 Ga. App. 408, 690 S.E.2d 659 (2010).

There was evidence to support the decision of the Georgia Department of Labor to disqualify an employee from unemployment compensation benefits on the

Disqualification (Cont'd)

ground that the employee's discharge was due to the employee's own fault because the initial claims examiner found that the employee had been fired for not following rules, orders, or the instructions of the employer when the employee failed to report for meetings to discuss the employee's job performance, and the administrative hearing officer agreed; the employee should have been aware that failing to meet work deadlines, entering partially blank supporting case notes, and ignoring the regional manager's direct communications and orders subjected the employee to termination. McCauley v. Thurmond, 311 Ga. App. 636, 716 S.E.2d 733 (2011).

Employer failed to show disqualification. — Employer failed to carry the employer's burden of showing that the employee was disqualified from unemployment benefits under O.C.G.A. § 34-8-194(2)(A) because of the employee's failure to report an arrest within a five-day deadline as the employee could not have reasonably expected that a short, immaterial delay in reporting the arrest would result in termination. Chisholm v. Ga. Dep't of Labor, 329 Ga. App. 188, 764 S.E.2d 432 (2014).

Evidence insufficient for disqualification. — Because no evidence supported a decision to deny a former employee unemployment benefits under O.C.G.A. § 34-8-194(2)(A), the trial court erred in affirming that decision; the former employer provided no evidence that the former employee intentionally failed or consciously neglected to perform the former employee's duties. Neither a hearing officer nor the Department of Labor Board of Review addressed the employee's contention that the former employee was unable to perform the job because the former employee could not find qualified subcontractors and did the best the former employee could given the former employee's resources. Skinner v. Thurmond, 294 Ga. App. 466, 669 S.E.2d 457 (2008).

Former employer failed to carry the burden of showing that a former employee was disqualified from unemployment benefits for the purpose of O.C.G.A. § 34-8-194, and the decision of the Georgia Department of Labor Board of Review to disqualify the employee was not supported by any evidence because the evidence did not support a finding that the employee's discharge could be attributed to conscious, deliberate fault in failing to arrange for child care when, after being informed on January 23, 2008 that she was required to go out-of-town on January 28, 2008, the employee promptly began efforts to secure child care, and the employee was terminated only two days after receiving notice of the project's start date; because the employee was in a lower-paying managing consultant position and not the constant-travel project lead position, the employee could not reasonably expect that an inability to confirm within 48 hours that the employee would travel on January 28, 2008 would result in termination. Davane v. Thurmond, 300 Ga. App. 474, 685 S.E.2d 446 (2009).

Because the only proof that an employer presented in the administrative proceedings was hearsay, the employer failed to prove by competent evidence that an employee was, in fact, terminated for violating the employer's policies and rules; therefore, the Board of Review of the Department of Labor erred in disqualifying the employee for benefits under O.C.G.A. § 34-8-194(2)(A). Teal v. Thurmond, 310 Ga. App. 312, 713 S.E.2d 436 (2011).

School district did not carry the district's burden of showing that the former employee came within the disqualification exception for unemployment benefits because the employee did not knowingly disobey the 2010 policy because the policy was not in effect when the employee was alleged to have violated the policy. Therefore, the employee was entitled to unemployment compensation. Slade v. Butler, 317 Ga. App. 688, 732 S.E.2d 543 (2012).

Department of Labor Board of Review erred in denying a former employee's claim for unemployment compensation benefits on the ground that the employee was at fault in causing the employee's unemployment because there was no evidence contradicting the employee's contention that the employee's order-picking errors occurred despite the employee's best efforts to perform the job in a satisfactory manner. Williams v. Butler, 322 Ga. App. 220, 744 S.E.2d 396 (2013).

To the extent that the employee's language and tone violated a standard of reasonable conduct, there was no evidence that the employer ever communicated such a standard to the employee or enforced such a standard with the employee or other employees and, thus, denial of unemployment benefits based on the employee's use of insubordinate language was erroneous. Barnett v. Ga. Dep't of Labor, 323 Ga. App. 882, 748 S.E.2d 688 (2013).

Nurse was entitled to unemployment benefits because, although the employer disapproved of the nurse's method, the evidence did not show that the nurse acted with deliberate, conscious fault in disobeying any policy when the nurse told a resident the nurse was going to administer a pain patch that had not been prescribed in an effort to determine if the resident was confused. Case v. Butler, 325 Ga. App. 123, 751 S.E.2d 883 (2013).

Trial court erred in upholding the Georgia Department of Labor's Board of Review's decision to disqualify the claimant because there was no evidence in the record that the claimant was at fault in the claimant's discharge, which occurred after a customer left the store without paying for merchandise, causing the claimant's register to be short funds. Thomas v. Butler, 330 Ga. App. 675, 769 S.E.2d 104 (2015).

34-8-196. Determination of eligibility for benefits of persons performing certain services; eligibility for benefits of aliens performing services.

(a) **Benefits based on service in employment as defined in subsections (h) and (i) of Code Section 34-8-35.** Benefits based on service in employment as defined in subsections (h) and (i) of Code Section 34-8-35 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other services subject to this chapter, except as otherwise provided in this Code section.

(b) **Benefits based on service in educational institutions.**

(1) For the purposes of this subsection, the term:

(A) "Educational institution" means any voluntary pre-kindergarten program, elementary or secondary school, post-secondary institution, or other provider of educational services, irrespective of whether such program, school, institution, or other provider is public or private or nonprofit or operated for profit, provided that it:

(i) Is approved, licensed, or issued a permit, grant, or other authority to operate as a program, school, institution, or other provider of educational services by a federal, state, or local government or any of the instrumentalities, divisions, or agencies thereof with the authority to do so; and

(ii) Offers, by or under the guidance of teachers or instructors, an organized course of study or training in a facility or through distance learning which is academic, technical, trade related, or preparation for gainful employment in a recognized occupation.

The Commissioner is authorized to establish by rules or regulations such exceptions or exemptions from the term "educational institution," as defined in this paragraph, as he or she shall deem appropriate, consistent with any federal program requirements applicable to this chapter.

(B) "Educational service contractor" means any public or private employer or other person or entity holding a contractual relationship with any educational institution or other person or entity to provide services to, for, with, or on behalf of any educational institution.

(C) "Educational service worker" means any person who performs services to, for, with, or on behalf of any educational institution, regardless of whether such person is engaged to perform such services by the educational institution or through an educational service contractor.

(2) With respect to services performed by an educational service worker in an instructional, research, or principal administrative capacity to, for, with, or on behalf of any educational institution, including those operated by the United States government or any of its instrumentalities, divisions, or agencies, benefits shall not be paid during periods of unemployment if services in such educational service worker capacity were performed in the prior year, term, or vacation period and there is a contract or a reasonable assurance of returning to work for any such educational institution or any educational service contractor immediately following the period of unemployment. Such periods of unemployment include those occurring:

(A) Between two successive academic terms or years;

(B) During an established and customary vacation period or holiday recess;

(C) During the time period covered by an agreement that provides instead for a similar period between two regular but not successive terms; or

(D) During a period of paid sabbatical leave provided for in the individual's contract.

(3) With respect to services performed by an educational service worker in any other capacity to, for, with, or on behalf of any educational institution, including those operated by the United States government or any of its instrumentalities, divisions, or agencies, benefits shall not be paid during periods of unemployment if services in such educational service worker capacity were performed in the prior year, term, or vacation period and there is a reasonable assurance of returning to work for any such educational

institution or any educational service contractor immediately following the period of unemployment. If compensation is denied pursuant to this paragraph to an individual, however, and such individual is not offered an opportunity to perform services for any educational institution or to provide services to, for, with, or on behalf of any educational institution for any educational service contractor following the unemployed period, such individual shall be entitled to retroactive payment for each week during that period of unemployment a timely claim was filed and benefits were denied solely by reason of this paragraph. Such periods of unemployment include those occurring:

(A) Between two successive academic years or terms; or

(B) During an established and customary vacation period or holiday recess.

(4) Benefits shall not be paid as specified in paragraphs (2) and (3) of this subsection to any individual for any week of unemployment if the individual performs such services in an educational institution while in the employ of an educational service agency. For the purposes of this paragraph, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(c) **Benefits based on services in professional sports.** Benefits shall not be paid to an individual on the basis of any services substantially all of which consist of participating in professional sports or athletic events or of training or preparing to so participate for any week which begins during the period between two successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the latter of such seasons or similar periods.

(d) **Benefits based on services performed by aliens.**

(1) Benefits shall not be paid to an individual based on services performed by an alien unless such alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are payable because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

(e) As used in this Code section, the term "reasonable assurance" means a written, verbal, or implied agreement between an employer and its employee that such employee will be returned to employment following the period of unemployment. (Code 1981, § 34-8-196, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1992, p. 776, § 4; Ga. L. 2014, p. 730, § 4/HB 714.)

Effective date. — This Code section became effective January 1, 2015.

The 2014 amendment, effective January 1, 2015, substituted "employment as defined in subsections (h) and (i) of Code Section 34-8-35" for "educational institutions" in the subsection (a) heading; added subsection (b); redesignated former paragraphs (a)(1) through (a)(3) as present paragraphs (b)(2) through (b)(4), respectively; in paragraph (b)(2), in the first sentence, inserted "by an educational service worker", inserted "to," following "capacity", and inserted ", with, or on behalf of" near the beginning, inserted "in such educational service worker capacity" near the middle, and substituted "any such educational institution or any educational service contractor immediately" for "an educational institution immediately" near the end; substituted a period for "; and" at the end of subparagraph (b)(2)(D); in paragraph (b)(3), in the first sentence, inserted "by an educational service worker", inserted "to, for,", and inserted ", or on behalf of" near the beginning, inserted "in such educational service worker capacity", substituted "any such educational institution or any educational service contractor immediately" for "an educational institution immediately" near the end; in the second sentence, substituted "such individual" for "that individual" and substituted "any educational institution or to provide services to, for, with, or on behalf of any educational institution for any educational service contractor following" for "the educational institution following" near the middle; substituted a period for "; and" at the end of subparagraph (b)(3)(B); substituted "paragraphs (2) and (3)" for "paragraphs (1) and (2)" in the first sentence of paragraph (b)(4); redesignated former subsection (b) as present subsection (c) and, in subsection (c), substituted "latter" for "later" near the end; and redesignated former subsections (c) and (d) as present subsections (d) and (e), respectively.

Law reviews. — For annual survey on labor and employment law, see 66 Mercer L. Rev. 121 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

34-8-197. Eligibility requirements for extended benefits.

(a) **Definitions.** As used in this Code section, the term:

(1) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period; provided, however, that with respect to extended benefit periods established under division (a)(3)(B)(i) of this Code section pertaining to Section 2005 of Public Law 111-5 and any extension thereof that does not impose any new condition upon receipt of 100

percent federal funding, or division (a)(3)(B)(ii) of this Code section pertaining to Section 502 of Public Law 111-312, "eligibility period" of an individual also means the period consisting of the weeks during which such individual is eligible for Emergency Unemployment Compensation provided for by the Supplemental Appropriations Act of 2008, Title IV Emergency Unemployment Compensation, Public Law 110-252, and the Unemployment Compensation Extension Act of 2008, Public Law 110-449, and any extension or expansion thereof, when such weeks begin in that extended benefit period and, if his or her eligibility for such emergency unemployment compensation ends within such extended benefit period, any weeks thereafter which begin in such period, except as otherwise limited by the provisions in division (a)(3)(B)(iii) of this Code section.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(A) Has received, prior to such week, all of the regular benefits that were available to him or her under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. Chapter 85, in his or her current benefit year that includes such week, provided that for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him or her, although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits;

(B) His or her benefit year having expired prior to such week, has no or insufficient wages on the basis of which he or she could establish a new benefit year that would include such week; and

(C)(i) Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States secretary of labor.

(ii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law, he or she is considered an exhaustee.

(3)(A) "Extended benefit period" means a period which:

(i) Begins with the third week after a week for which there is a state "on" indicator; and

(ii) Ends with either of the following weeks, whichever occurs later:

(I) The third week after the first week for which there is a state "off" indicator; or

(II) The thirteenth consecutive week of such period.

However, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state. There is a state "on" indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment under the state law for the period equaled or exceeded 120 percent of the average of such rates for the corresponding 13 week period ending in each of the preceding two calendar years and equaled or exceeded 5 percent.

(B)(i) With respect to weeks of unemployment beginning on or after February 1, 2009, there is a state "on" indicator for a week if:

(I) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6 1/2 percent; and

(II) The average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in subdivision (I) of this subparagraph, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(ii) In accordance with the provisions of Section 502(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, with respect to weeks of unemployment beginning on or after February 27, 2011, and ending on December 31, 2011, there is a state "on" indicator for a week if:

(I) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6 1/2 percent; and

(II) The average rate of total unemployment in this state, seasonally adjusted, as determined by the United States

secretary of labor, for the three-month period referred to in subdivision (I) of this subparagraph, equals or exceeds 110 percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.

(iii) This subparagraph shall apply only through the week ending four weeks prior to the last week for which 100 percent federal funding is authorized and provided pursuant to either Section 2005(a) of Public Law 111-5 or any extension thereof that does not impose any new condition upon receipt of such federal funding, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of such law.

(C) There is a state "off" indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, none of the options specified in subparagraphs (A) and (B) of this paragraph result in an "on" indicator.

(4) "Rate of insured unemployment," for purposes of paragraph (3) of this subsection, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims in this state, not including individuals filing claims for extended benefits or regular benefits claimed by federal civilian employees and ex-service personnel, for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the Commissioner on the basis of the Commissioner's reports to the United States secretary of labor; by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13 week period.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. Chapter 85, other than extended benefits.

(6) "State law" means the unemployment insurance law of any state approved by the United States secretary of labor under Section 3304 of the Internal Revenue Code.

(7) "Suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided that, if the individual furnishes evidence satisfactory to the Commissioner that such individual's prospects for obtaining work in the customary occupation of such individual within a reasonably short period are good, the determination of whether any work is suitable work with

respect to such individual shall be made in accordance with this chapter.

(b) **Applicability of provisions as to regular benefits to claims for and payment of extended benefits.** Except when the result would be inconsistent with the other provisions of this Code section, as provided in the regulations of the Commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits. To establish entitlement to extended benefits, an individual must have been paid in at least two quarters of the base period and total wages in the base period must equal or exceed 150 percent of the highest quarter base period wages. The alternative computation for entitlement as required by Code Section 34-8-193 shall not apply to extended benefits.

(c) **Eligibility requirements for extended benefits.** An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the eligibility period of the individual only if the Commissioner finds that with respect to such week:

(1) He or she is an "exhaustee" as defined in paragraph (2) of subsection (a) of this Code section; and

(2) He or she has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; provided, however, that the total extended benefits otherwise payable to an individual who has filed an interstate claim under the interstate benefit payment plan shall not exceed two weeks whenever an extended benefit period is not in effect for such week in the state where the claim is filed; provided, further, if an individual has been disqualified in his or her most recent benefit year or on his or her extended benefit claim, only those who are required to return to work and to earn additional insured wages in employment in order to terminate this disqualification and who satisfy this requirement shall be eligible to receive extended benefits; provided, further, if the benefit year of a claimant ends within an extended benefit period, the number of weeks of extended benefits that such claimant would be entitled to in that extended benefit period, but for this subsection, shall be reduced, but not below zero, by the number of weeks for which the claimant was entitled to trade readjustment allowances during such benefit year. For purposes of this subsection, the terms "benefit year" and "extended benefit period" shall have the same respective meanings.

(d) **Weekly extended benefit amount.** The weekly extended benefit amount payable to an individual for a week of total unemployment in the eligibility period of such individual shall be an amount equal to

the weekly benefit amount payable to him or her during his or her applicable benefit year.

(e) **Total extended benefit amount.** Except as provided in subsection (l) of this Code section, the total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him or her under this chapter in his or her applicable benefit year;

(2) Thirteen times his or her weekly benefit amount which was payable to him or her under this chapter for a week of total unemployment in the applicable benefit year; or

(3) Thirty-nine times the individual's weekly benefit amount which was payable to the individual under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him or her under this chapter with respect to the benefit year.

(f) **Notice as to beginning and termination of extended benefit period.** Whenever an extended benefit period is to become effective in this state as a result of the state "on" indicator or whenever an extended benefit period is to be terminated in this state as a result of the state "off" indicator, the Commissioner shall make an appropriate announcement.

(g) **Computations.** Computations required by paragraph (4) of subsection (a) of this Code section shall be made by the Commissioner in accordance with regulations prescribed by the United States secretary of labor.

(h) **Nonpayment of extended benefits for failure to seek or accept work.** Notwithstanding other provisions of this Code section, payment of extended benefits under this Code section shall not be made to any individual for any week of unemployment in his or her eligibility period during which he or she fails:

(1) To accept any offer of suitable work or fails to apply for any suitable work to which he or she was referred by the State Employment Service; or

(2) To engage actively in seeking work. For the purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

(A) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(B) The individual provides tangible evidence to the satisfaction of the Commissioner that he or she has engaged in such an effort during such week.

(i) **Period of nonpayment for extended benefits.** If any individual is ineligible for extended benefits for any week by reason of a failure described in paragraph (1) or (2) of subsection (h) of this Code section, the individual shall be ineligible to receive extended benefits for any week which begins during a period which:

(1) Begins with the week following the week in which such failure occurs; and

(2) Does not end until such individual has been employed during at least four weeks which begin after such failure and for which the total of the remuneration in insured wages for services in employment earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount for his or her benefit year.

(j) **Exceptions to subsection (h) of this Code section.** No individual shall be denied extended benefits under paragraph (1) of subsection (h) of this Code section for any week by reason of a failure to accept an offer of or apply for suitable work:

(1) If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:

(A) The individual's weekly benefit amount for such individual's benefit year; and

(B) The amount, if any, of supplemental unemployment compensation benefits, as defined in Code Section 34-8-45, payable to such individual for such week;

(2) If the position was not offered to such individual in writing and was not listed with the State Employment Service;

(3) If such failure would not result in a denial of benefits under this chapter to the extent that such provisions are not inconsistent with paragraph (7) of subsection (a) of this Code section and the provisions of subsection (h) of this Code section which relate to individuals actively engaged in seeking work; or

(4) If the position pays wages less than the higher of:

(A) The minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(B) The Georgia minimum wage.

(k) **Referral of claimants to suitable work.** A claimant for extended benefits shall be referred to any suitable work as provided for

in paragraph (7) of subsection (a) of this Code section which is not excluded by subsection (j) of this Code section.

(l) Effective with respect to weeks beginning in a high-unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) Eighty percent of the total amount of regular benefits that were payable to the individual pursuant to this chapter in the individual's applicable benefit year;

(2) Twenty times the individual's weekly benefit amount that was payable to the individual pursuant to this chapter for a week of total unemployment in the applicable benefit year; or

(3) Forty-six times the individual's weekly benefit amount which was payable to the individual under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him or her under this chapter with respect to the benefit year.

(m) For purposes of subsection (l) of this Code section, "high-unemployment period" means a period during which an extended benefit period would be in effect if subdivision (a)(3)(B)(i)(I) or, if applicable, subdivision (a)(3)(B)(ii)(I) of this Code section were applied by substituting "8 percent" for "6 1/2 percent."

(n) Subsections (l) and (m) of this Code section shall apply through the week ending four weeks prior to the last week for which 100 percent federal funding is authorized and provided pursuant to either Section 2005(a) of Public Law 111-5 or any extension thereof that does not impose any new condition upon receipt of such federal funding, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of such law. (Code 1981, § 34-8-197, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1992, p. 6, § 34; Ga. L. 1992, p. 776, § 5; Ga. L. 2009, p. 139, § 9/HB 581; Ga. L. 2010, p. 878, § 34/HB 1387; Ga. L. 2011, p. 382, §§ 1, 2/HB 500.)

The 2009 amendment, effective April 21, 2009, in subsection (a), added the proviso at the end of paragraph (a)(1), in paragraph (a)(3), added the subparagraph (a)(3)(A) designation, redesignated former subparagraphs (a)(3)(A) and (a)(3)(B) as divisions (a)(3)(A)(i) and (a)(3)(A)(ii), respectively, redesignated former divisions (a)(3)(B)(i) and (a)(3)(B)(ii) as subdivisions (a)(3)(A)(ii)(I) and (a)(3)(A)(ii)(II), respectively, deleted the former last sentence of subparagraph (a)(3)(A,) which read: "There is a state 'off' indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, either of the above provisions is not satisfied.", and added subparagraphs (a)(3)(B) and (a)(3)(C); in subsection (e), substituted "Except as provided in subsection (l) of this Code section, the" for "The" at the beginning; and added subsections (l) through (n).

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modern-

ize, and correct the Code, inserted "of" near the beginning of the introductory paragraph of subsection (e).

The 2011 amendment, effective July 1, 2011, in paragraph (a)(1), substituted "upon receipt of 100 percent federal funding" for "upon receipt of such federal funding", inserted "or division (a)(3)(B)(ii) of this Code section pertaining to Section 502 of Public Law 111-312,", inserted "and any extension or expansion thereof,", and substituted "division (a)(3)(B)(iii)" for "division (a)(3)(B)(ii)" near the end; added division (a)(3)(B)(ii); redesignated former division (a)(3)(B)(ii) as present division (a)(3)(B)(iii), and, in division (a)(3)(B)(iii), inserted "only", substituted "four weeks" for "three weeks", and added ", without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of such law" at the end; inserted "or, if applicable, subdivision (a)(3)(B)(ii)(I)" in subsection (m); and, in subsection (n), substituted "four weeks" for "three weeks" and added ", without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of such law" at the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "subsection (l) of this Code section" was substituted for "paragraph (1) of this section" in the introductory language of subsection (e).

Editor's notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Works Job Creation and Protection Act of 2009.'"

Ga. L. 2009, p. 139, § 12, not codified by the General Assembly, provides, in part, that the Commissioner of Labor may delay the implementation of the 2009 amendment for a period of time not to extend beyond May 25, 2009, if the Commissioner of Labor determines that it is not reasonably practicable to commence implementation of such section as of April 21, 2009.

34-8-199. Definitions; disclosure; withholding uncollected overissuance.

(a) As used in this Code section, the term:

(1) "Uncollected overissuance" has the same meaning as provided in 7 U.S.C. Section 2022(c)(1).

(2) "Unemployment compensation" means any compensation payable under this chapter including amounts payable by the Commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(b) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance of food stamp coupons. The Commissioner shall notify the Department of Human Services or the successor state food stamp agency enforcing such obligation of any individual who discloses that he or she owes such uncollected overissuance and who is determined to be eligible for unemployment compensation.

(c) The Commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

(1) The amount specified by the individual to the Commissioner to be deducted and withheld as provided by this Code section;

(2) The amount, if any, determined pursuant to an agreement submitted to the Department of Human Services or the successor state food stamp agency under 7 U.S.C. Section 2022(c)(3)(A); or

(3) Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C. Section 2022(c)(3)(B).

(d) Any amount deducted and withheld pursuant to this Code section shall be paid by the Commissioner to the Department of Human Services or the successor state food stamp agency.

(e) Any amount deducted and withheld under subsection (d) of this Code section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Human Services or the successor state food stamp agency as repayment of the individual's uncollected issuance.

(f) This Code section applies only if arrangements have been made for reimbursement by the Department of Human Services or the successor state food stamp agency for the administrative costs incurred by the Commissioner under this Code section which are attributable to the repayment of uncollected overissuances to the Department of Human Services or the successor state food stamp agency. (Code 1981, § 34-8-199, enacted by Ga. L. 1997, p. 888, § 2; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the second sentence of subsection (b), in paragraph (c)(2), in subsections (d) and (e), and twice in subsection (f).

ARTICLE 8

APPEALS

34-8-221. Review of decision of hearing officer by board of review.

(a) The board of review may on its own motion affirm, modify, or set aside any decision of an administrative hearing officer on the basis of the evidence previously submitted in such case or direct the taking of additional evidence or may permit any of the parties to such decision to initiate further appeals before the board of review. The board of review shall promptly notify the parties to any proceedings of its findings and decision. The decision of the board shall become final 15 days from the date the decision is mailed to the parties.

(b) The board of review may, in its discretion and on its own motion, reconsider its decision at any time within 15 days from the date the

decision is mailed to the parties. The board shall notify all concerned parties of its intent to reconsider a final decision. Such notice shall stay the process of judicial review until a final decision is released by the board.

(c) The quorum for the board of review shall be two members. No meeting of the board shall be scheduled when it is anticipated that less than two members will be present, and no hearing shall be held nor decision released by the board in which less than two members participated.

(d) In the event only two members are able to vote on a case and one member votes to affirm the decision of the administrative hearing officer but the other member votes to reverse the decision or remand the case for another hearing, the decision of the administrative hearing officer shall stand affirmed.

(e) The Commissioner shall provide the board of review and the office of administrative appeals with proper facilities and assistants for the execution of their functions. (Code 1981, § 34-8-221, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2014, p. 730, § 5/HB 714.)

The 2014 amendment, effective April 24, 2014, in subsection (a), in the last sentence, substituted "shall become final 15 days from the date the decision is mailed to the parties" for "be final"; and, in subsection (b), in the first sentence, deleted "final" following "reconsider its" and substituted "from the date the decision is mailed to the parties" for "of the release of the final decision of the board".

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

34-8-223. Procedure for judicial review of final decisions of board of review.

(a) Any decision of the board of review, in the absence of a reconsideration as provided in subsection (b) of Code Section 34-8-221, shall become final 15 days after the date of notification or mailing. Judicial review shall be permitted only after any party claiming to be aggrieved thereby has exhausted his or her administrative remedies as provided by this chapter. The Commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the Attorney General.

(b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which

a review is sought, shall be served upon the Commissioner or upon his or her designee within 30 days from the date of filing. Such service upon the Commissioner shall be made by certified mail or statutory overnight delivery, return receipt requested; hand delivery; or in a manner prescribed by the law of this state for service of process to Georgia Department of Labor, Unemployment Insurance Legal Section, Suite 826, 148 Andrew Young International Boulevard, N.E., Atlanta, GA 30303-1751. Such service shall be deemed completed service on all parties, but there shall be so served upon the Commissioner or his or her designee as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent. Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title. An appeal may be taken from the decision of the superior court to the Court of Appeals in the same manner as is provided in civil cases but not inconsistent with this chapter. No bond shall be required for entering an appeal. (Code 1981, § 34-8-223, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2014, p. 730, § 6/HB 714.)

The 2014 amendment, effective April 24, 2014, substituted "subsection (b) of Code Section 34-8-221" for "subsection (d) of Code Section 34-8-192" in the first sentence of subsection (a); and, in subsection (b), substituted the present provisions of the fourth through sixth sentences for the former fourth sentence, which read: "The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be

deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents."

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

JUDICIAL DECISIONS

Jurisdiction. — Venue for an employee's petition for judicial review from a denial of unemployment benefits lay in Fulton County pursuant to O.C.G.A. § 34-8-223(b); although the employee last worked in Laurens County pursuant to a subcontract, the employee's contractual employer was a staffing firm with its principal place of business in Fulton. This provision, rather than O.C.G.A. § 50-13-19, applied to the employee's situation. Fed v. Butler, 327 Ga. App. 637, 760 S.E.2d 642 (2014).

No neglect or deliberate malfeasance justifying denial of benefits. — Decision denying a teacher unemployment compensation was reversed on appeal because the teacher's failure to pass an exam required as a condition of employment after taking the exam eight times was not due to any conscious neglect or deliberate malfeasance which would have justified disqualifying the teacher from receiving benefits. Johnson v. Butler, 323 Ga. App. 743, 748 S.E.2d 111 (2013).

Department failed to prove fraud. — Trial court erred by failing to conclude that it was not proven that a claimant knowingly underreported income in order to obtain unemployment benefits because while the evidence may have established that the claimant was less than diligent in monitoring deposits and ascertaining the income received, such conduct was an insufficient basis for imposing fraud penalties pursuant to O.C.G.A. § 34-8-255. Charles v. Butler, 331 Ga. App. 336, 771 S.E.2d 43 (2015).

Cited in Case v. Butler, 325 Ga. App. 123, 751 S.E.2d 883 (2013).

ARTICLE 9

PROHIBITED AND VOID ACTS; OVERPAYMENTS

34-8-253. Obedience to subpoena required; self-incrimination; quashing, modification, or withdrawal of subpoena.

(a) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commissioner, the board of review, the chief administrative hearing officer, or their duly authorized representatives or in obedience to a subpoena issued by them on the ground that the testimony or evidence, documentary or otherwise, required of a person may tend to incriminate or subject such person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such person testifying shall not be exempt from prosecution and punishment for perjury committed in testifying.

(b) The Commissioner, the board of review, the chief administrative hearing officer, or any duly authorized representative of any of them

may quash, modify, or withdraw a subpoena issued by them. (Code 1981, § 34-8-253, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 2014, p. 730, § 7/HB 714.)

The 2014 amendment, effective April 24, 2014, designated the existing provisions of this Code section as subsection (a); in subsection (a), substituted the present provisions of the first sentence for the former provisions, which read: "No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commissioner, the board of review, an administrative hearing officer, or any duly authorized representative of any of them or in obedience to the subpoena of any of them in any cause or proceeding before the Commissioner, the board of review, or an administrative hearing officer on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.", and substituted "person" for "individual" in three places in the second sentence; and added subsection (b).

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

34-8-254. Overpayments.

(a) Any person who has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled or while the person was disqualified from receiving benefits shall, in the discretion of the Commissioner:

(1) Be liable to have such sums deducted from any future benefits payable to such person under this chapter, with no single deduction to exceed 50 percent of the amount of the payment from which such deduction is made; and

(2) Be liable to repay the Commissioner for the Unemployment Compensation Fund a sum equal to the amount so received by such person. Such sum shall be collectable in the manner provided by law for the collection of debts or any other method of collection specifically authorized by this chapter.

(b) For the purpose of collecting overpaid benefits when the person who owes the payment resides or is employed outside this state, the Commissioner may enter into an agreement with one or more private persons, companies, associations, or corporations providing debt collection services; provided, however, the Commissioner shall retain legal responsibility and authority for the collection of overpayments of benefits and any debt collection agency shall function merely as an agent of the Commissioner for this purpose. The agreement may provide, at the discretion of the Commissioner, the rate of payment and the manner in which compensation for services shall be paid. The Commissioner shall provide the necessary information for the contractor to fulfill its obligations under the agreement. Any funds recovered shall be transmitted promptly to the Commissioner for deposit into the Unemployment Compensation Fund.

(c)(1) Except as provided in paragraph (2) of this subsection, the Commissioner may waive the repayment of an overpayment of benefits if the Commissioner determines such repayment to be inequitable.

(2) If any person receives such overpayment because of false representations or willful failure to disclose a material fact by such person, inequitability shall not be a consideration and the person shall be required to repay the entire overpayment plus all applicable penalty and interest amounts. Such penalty amounts shall not be waived. Interest accrued on the overpayment is subject to waiver if the Commissioner determines such waiver to be in the best interest of this state.

(d) Any person who has received any sum as benefits under this chapter and is subsequently awarded or receives back wages from any employer for all or any portion of the same period of time for which such person has received such benefits shall be liable, in accordance with subsection (a) of this Code section, to repay a sum equal to the benefits paid during the period for which such back wages were awarded, and the employer shall be:

(1) Authorized to deduct from an award of back wages an amount equal to all unemployment benefits received by such person under this chapter with respect to the same period of time. The employer shall remit the amount deducted to the Commissioner for the Unemployment Compensation Fund. Upon receipt of such payment the Commissioner shall then make appropriate adjustments in the unemployment contributions experience rating account of the employer as otherwise provided in this chapter; or

(2) Entitled to a setoff against the award of back wages in an amount equal to all benefits paid to the employee during the period for which such back wages are awarded or received, if such employer is a governmental entity or nonprofit organization that has elected to make payments in lieu of contributions in accordance with Code Section 34-8-158 and the employee is subsequently awarded or otherwise receives payment of back wages for any period of time for which such employee received benefits under this chapter.

(e) Any action to recover an overpayment shall be brought by the Commissioner or an authorized representative of the Commissioner within seven years from the release date of the notice of determination and overpayment by the department. (Code 1981, § 34-8-254, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1994, p. 640, § 5; Ga. L. 1994, p. 779, § 1; Ga. L. 2014, p. 730, § 8/HB 714; Ga. L. 2015, p. 830, § 6/HB 117.)

The 2014 amendment, effective April 24, 2014, in subsection (a), substituted the present provisions of the first sentence for the former provisions, which read: "Any

person who has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled or while the person was disqualified from receiving benefits shall, in the discretion of the Commissioner, either be liable to have such sums deducted from any future benefits payable to such person under this chapter, no single deduction to exceed 50 percent of the amount of the payment from which such deduction is made, or shall be liable to repay the Commissioner for the Unemployment Compensation Fund a sum equal to the amount so received by him."; in subsection (b), in the first sentence, substituted "person" for "individual" and substituted "outside this state" for "outside the State of Georgia" near the beginning and substituted "Unemployment Compensation Fund" for "Unemployment Trust Fund" in the last sentence; substituted the present provisions of subsection (c) for the former provisions, which read: "The Commissioner may waive the repayment of an overpayment of benefits if the Commissioner determines such repayment to be inequitable. If any person receives such overpayment because of false representations or willful failure to disclose a material fact by such individual, inequitability shall not be a consideration and the person shall be required to repay the entire overpayment; provided, however, that penalty and interest accrued on the overpayment are subject to waiver if the Commissioner determines such waiver to be in the best interest of the state."; in the introductory paragraph of subsection (d), inserted ", in accordance with subsection (a) of this Code section," and substituted "and the employer shall be" for "as follows"; in paragraph (d)(1), in the first sentence, substituted "Authorized" for "An employer shall be authorized" and substituted "an amount equal to all unemployment" for "the amount of unemployment" and substituted "or" for "and" at the end; and substituted the present provisions of paragraph (d)(2) for the former provisions, which read: "If the employer is a governmental entity or nonprofit organization that has elected to make payments in lieu of contributions in accordance with Code Section 34-8-158 and the employee is subsequently awarded or otherwise receives payment of back wages for any period of time for which the employee received benefits under this chapter, said employer shall be entitled to a setoff against the award of back wages in an amount equal to all benefits paid to the employee during the period for which such back wages are awarded or received."

The 2015 amendment, effective May 6, 2015, added subsection (e).

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

JUDICIAL DECISIONS

Department failed to prove fraud. — Trial court erred by failing to conclude that it was not proven that a claimant knowingly underreported income in order to obtain unemployment benefits because while the evidence may have established that the claimant was less than diligent in monitoring deposits and ascertaining the income received, such conduct was an insufficient basis for imposing fraud penalties pursuant to O.C.G.A. § 34-8-255. Charles v. Butler, 331 Ga. App. 336, 771 S.E.2d 43 (2015).

34-8-255. Effect of false statements and misrepresentations made to obtain or increase benefits.

Any person who knowingly makes a false statement or misrepresentation as to a material fact or who knowingly fails to disclose a material fact to obtain or increase benefits under this chapter, either for himself or herself or for any other person, or who knowingly accepts benefits under this chapter to which such person is not entitled shall, upon an

appropriate finding by the Commissioner, cease to be eligible for such benefits and an overpayment of benefits shall be computed without the application of deductible earnings as otherwise provided in Code Section 34-8-193. A penalty of 15 percent shall be added to the overpayment and become part of the overpayment. Interest shall accrue on the unpaid portion of such overpayment at a rate of 1 percent per month until repaid to the Commissioner for the Unemployment Compensation Fund. Further, such person shall forfeit all unpaid benefits for any weeks of unemployment subsequent to the date of the determination issued by the Commissioner covering said act or omission. The ineligibility shall include any unpaid benefits to which the person would otherwise be entitled during the remainder of any incomplete calendar quarter in which said determination is made and the next four complete calendar quarters immediately following the date of said determination; provided, however, such person shall be required to repay benefits received for any week as specified in said determination. No determination may be made by the Commissioner more than four years after such occurrence, act, or omission. Any such determination by the Commissioner may be appealed in the same manner as provided for the appeal from an initial determination in Article 8 of this chapter. The provisions of this Code section shall be in addition to, and not in lieu of, any provision contained in any of the other Code sections in this chapter. (Code 1981, § 34-8-255, enacted by Ga. L. 1991, p. 139, § 1; Ga. L. 1994, p. 640, § 6; Ga. L. 2014, p. 730, § 9/HB 714.)

The 2014 amendment, effective April 24, 2014, substituted "penalty of 15 percent shall" for "penalty of 10 percent may" near the beginning of the second sentence of this Code section.

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

JUDICIAL DECISIONS

Department failed to prove fraud. — Trial court erred by failing to conclude that it was not proven that a claimant knowingly underreported income in order to obtain unemployment benefits because while the evidence may have established that the claimant was less than diligent in monitoring deposits and ascertaining the income received, such conduct was an insufficient basis for imposing fraud penalties pursuant to O.C.G.A. § 34-8-255. Charles v. Butler, 331 Ga. App. 336, 771 S.E.2d 43 (2015).

CHAPTER 9

WORKERS' COMPENSATION

Article 1

General Provisions

Article 2

Administration

Article 3

Procedure

Part 2

Hearing and Appeals

Article 4

Insurance of Compensation Liability Generally

Article 6

Payment of Compensation

Part 1

Medical Attention

OPINIONS OF THE ATTORNEY GENERAL

Enforcement of aggravated identity fraud statute. — Investigators of the Enforcement Division who are certified as peace officers may enforce the aggravated identity fraud statute, O.C.G.A. § 16-9-121.1, by arrest and the execution of search warrants provided that the arrest and search is the result of a criminal investigation of an alleged violation of the workers' compensation laws of O.C.G.A. Ch. 9, T. 34. 2012 Op. Att'y Gen. No. 12-3.

ARTICLE 1

GENERAL PROVISIONS

34-9-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Workers' Compensation.

(2) "Employee" means every person in the service of another under any contract of hire or apprenticeship, written or implied, except a person whose employment is not in the usual course of the trade, business, occupation, or profession of the employer; and, except as otherwise provided in this chapter, minors are included even though working in violation of any child labor law or other similar statute; provided, however, that nothing contained in this chapter shall be construed as repealing or altering any such law or statute. Any reference to any employee who has been injured shall, if the employee dies, include such employee's legal representatives, dependents, and other persons to whom compensation may be payable pursuant to this chapter. All firefighters, law enforcement personnel, and personnel of emergency management or civil defense agencies, emergency medical services, and rescue organizations whose compensation is paid by the state or any county or municipality, regardless of the method of appointment, and all full-time county employees and employees of elected salaried county officials are specifically included

in this definition. There shall also be included within such term any volunteer firefighter of any county or municipality of this state, but only for services rendered in such capacity which are not prohibited by Code Section 38-3-36 and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer firefighters; any volunteer law enforcement personnel of any county or municipality of this state who are certified by the Georgia Peace Officer Standards and Training Council, for volunteer law enforcement services rendered in such capacity which are not prohibited by Code Section 38-3-36 and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer law enforcement personnel; any person who is a volunteer member or worker of an emergency management or civil defense organization, emergency medical service, or rescue organization, whether governmental or not, of any county or municipality of this state for volunteer services, which are not prohibited by Code Section 38-3-36, rendered in such capacity and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer members or workers; and any person certified by the Department of Public Health or the Georgia Composite Medical Board and registered with any county or municipality of this state as a medical first responder for any volunteer first responder services rendered in such capacity, which are not prohibited by Code Section 38-3-36 and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such responders. The various elected county officers and elected members of the governing authority of an individual county shall also be included in this definition, if the governing authority of such county shall provide therefor by appropriate resolution. For the purposes of workers' compensation coverage, employees of county and district health agencies established under Chapter 3 of Title 31 are deemed and shall be considered employees of the State of Georgia and employees of community service boards established under Chapter 2 of Title 37 shall be considered to be employees of the state. For the purpose of workers' compensation coverage, members of the Georgia National Guard and the State Defense Force serving on state active duty pursuant to an order by the Governor are deemed and shall be considered to be employees of this state. A person shall be an independent contractor and not an employee if such person has a written contract as an independent contractor and if such person buys a product and resells it, receiving no other compensation, or provides an agricultural service or such person otherwise qualifies as an independent contractor. Notwithstanding the foregoing provisions

of this paragraph, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of such election with the insurer or, if there is no insurer, the State Board of Workers' Compensation as provided in Code Section 34-9-2.1. For purposes of this chapter, an owner-operator as such term is defined in Code Section 40-2-87 shall be deemed to be an independent contractor. Inmates or persons participating in a work release program, community service program, or similar program as part of the punishment for violation of a municipal ordinance pursuant to Code Section 36-32-5 or a county ordinance or a state law shall not be deemed to be an employee while participating in work or training or while going to and from the work site or training site, unless such inmate or person is employed for private gain in violation of Code Section 42-1-5 or Code Section 42-3-50 or unless the municipality or county had voluntarily established a policy, on or before January 1, 1993, to provide workers' compensation benefits to such individuals. Individuals who are parties to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule, 16 C.F.R. 436.1 through 436.11, shall not be deemed employees for purposes of this chapter.

(3) "Employer" shall include the State of Georgia and all departments, instrumentalities, and authorities thereof; each county within the state, including its school district; each independent public school district; any municipal corporation within the state and any political division thereof; any individual, firm, association, or public or private corporation engaged in any business, except as otherwise provided in this chapter, and the receiver or trustee thereof; any electric membership corporation organized under Article 4 of Chapter 3 of Title 46 or other cooperative corporation engaged in rural electrification, including electric refrigeration cooperatives; any telephone cooperative organized under Part 3 of Article 2 of Chapter 5 of Title 46 or other cooperative or nonprofit corporation engaged in furnishing telephone service; the legal representative of a deceased employer using the service of another for pay; and any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits. If the employer is insured, this term shall include his insurer as far as applicable.

(4) "Injury" or "personal injury" means only injury by accident arising out of and in the course of the employment and shall not, except as provided in this chapter, include a disease in any form except where it results naturally and unavoidably from the accident. Except as otherwise provided in this chapter, "injury" and "personal

injury" shall include the aggravation of a preexisting condition by accident arising out of and in the course of employment, but only for so long as the aggravation of the preexisting condition continues to be the cause of the disability; the preexisting condition shall no longer meet this criteria when the aggravation ceases to be the cause of the disability. "Injury" and "personal injury" shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee, nor shall "injury" and "personal injury" include heart disease, heart attack, the failure or occlusion of any of the coronary blood vessels, stroke, or thrombosis unless it is shown by a preponderance of competent and credible evidence, which shall include medical evidence, that any of such conditions were attributable to the performance of the usual work of employment. Alcoholism and disabilities attributable thereto shall not be deemed to be "injury" or "personal injury" by accident arising out of and in the course of employment. Drug addiction or disabilities resulting therefrom shall not be deemed to be "injury" or "personal injury" by accident arising out of and in the course of employment except when such addiction or disability resulted from the use of drugs or medicines prescribed for the treatment of the initial injury by an authorized physician. Notwithstanding any other provision of this chapter, and solely for members of the Georgia National Guard and State Defense Force, an injury arising in the course of employment shall include any injury incurred by a member of the Georgia National Guard or State Defense Force while serving on state active duty or when traveling to and from state active duty. (Ga. L. 1920, p. 167, §§ 2, 45; Ga. L. 1922, p. 185, § 1; Code 1933, §§ 114-101, 114-102; Ga. L. 1943, p. 401, § 1; Ga. L. 1946, p. 103; Ga. L. 1950, p. 324, § 1; Ga. L. 1950, p. 404, § 1; Ga. L. 1952, p. 167, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 526, § 1; Ga. L. 1958, p. 183, § 1; Ga. L. 1963, p. 141, § 1; Ga. L. 1964, p. 675, § 1; Ga. L. 1967, p. 633, § 1; Ga. L. 1968, p. 1163, § 1; Ga. L. 1970, p. 196, § 1; Ga. L. 1970, p. 235, § 1; Ga. L. 1973, p. 232, § 1; Ga. L. 1975, p. 190, § 1; Ga. L. 1975, p. 1231, § 1; Ga. L. 1978, p. 2220, § 1; Ga. L. 1980, p. 1145, § 1; Ga. L. 1981, p. 842, § 1; Ga. L. 1981, p. 1585, § 1; Ga. L. 1982, p. 2360, §§ 1, 3; Ga. L. 1982, p. 2485, §§ 0.5, 5.5; Ga. L. 1983, p. 3, § 25; Ga. L. 1984, p. 816, § 1; Ga. L. 1987, p. 1038, § 1; Ga. L. 1987, p. 1110, § 1; Ga. L. 1988, p. 1679, § 0.5; Ga. L. 1990, p. 1501, § 1; Ga. L. 1991, p. 94, § 34; Ga. L. 1991, p. 677, § 1; Ga. L. 1991, p. 1850, § 1; Ga. L. 1992, p. 1942, § 1; Ga. L. 1993, p. 491, § 1; Ga. L. 1994, p. 97, § 34; Ga. L. 1994, p. 887, § 1; Ga. L. 1994, p. 1717, § 2; Ga. L. 1996, p. 1291, § 1; Ga. L. 2000, p. 794, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 685, § 1/HB 548; Ga. L. 2015, p. 422, § 5-53/HB 310.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the fourth sentence of paragraph (2). The second 2009 amendment, effective July 1, 2009, substituted "Georgia Composite Medical Board" for "Composite State Board of Medical Examiners" in the middle of the third sentence of paragraph (2).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the fourth sentence of paragraph (2).

The 2012 amendment, effective July 1, 2012, added the last sentence in paragraph (2).

The 2015 amendment, effective July 1, 2015, in paragraph (2), substituted "such county" for "said county" near the end of the fifth sentence, and, in the middle of the tenth sentence, substituted "Code Section 42-3-50" for "Code Section 42-8-70". See editor's note for applicability.

Code Commission notes. — Ga. L. 2012, p. 685, § 1/HB 548, amended paragraph (2) of this Code section and in so doing omitted without expressing an intent to repeal or modify the amendment made to that paragraph made by Ga. L. 2011, p. 705, § 6-3/HB 214. The two amendments were not irreconcilably conflicting, and the amendment to paragraph (2) of this Code section made by Ga. L. 2011, p. 705, § 6-3/HB 214, was treated as not having been repealed by Ga. L. 2012, p. 685, § 1/HB 548.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011). For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration

Constitutionality.

Because the Workers' Compensation Act's, O.C.G.A. § 34-9-1 et seq., differing treatment of dependent and non-dependent heirs is not irrational and serves the legitimate government purpose of workers' compensation, the Act's limitation on recovery by non-dependent heirs

General Consideration (Cont'd)

does not violate the due process or equal protection rights guaranteed by the United States Constitution. Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Limitation of benefits to dependents constitutional. — Summary judgment was properly granted to the employer with regard to a non-dependent parent's claim for benefits for the death of an adult child under the provisions of the Workers' Compensation Act, O.C.G.A. § 34-9-1 et seq., because the mother was a non-dependent heir and the Act's limitation on the recovery of non-dependent heirs under O.C.G.A. § 34-9-265(b)(1) did not violate the mother's constitutional rights to due process and equal protection. Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Applicability of Civil Practice Act. — O.C.G.A. § 9-11-15(c) has been not been incorporated into the Georgia Workers' Compensation Act, O.C.G.A. § 34-9-1 et seq. McLendon v. Advertising That Works, 292 Ga. App. 677, 665 S.E.2d 370 (2008).

Cited in Coker v. Great Am. Ins. Co., 290 Ga. App. 342, 659 S.E.2d 625 (2008); Parham v. Swift Transp. Co., 292 Ga. App. 53, 663 S.E.2d 769 (2008); Rheem Mfg. v. Butts, 292 Ga. App. 523, 664 S.E.2d 878 (2008); Master Craft Flooring v. Dunham, 308 Ga. App. 430, 708 S.E.2d 36 (2011).

Employer and Employee Relationship

1. In General

Sheriff was employer of deputy. — Trial court did not err in dismissing a sheriff's deputy's widow's claims against the sheriff and the deputy's fellow deputies on the basis that the Workers' Compensation Act provided her exclusive remedy under O.C.G.A. § 34-9-11(a). The sheriff was the deputy's "employer" under Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), and O.C.G.A. § 34-9-1(3). Teasley v. Freeman, 305 Ga. App. 1, 699 S.E.2d 39 (2010).

7. Particular Workers

Convict.

There was no error in finding that a former inmate's participation in a work release program at a bakery was part of the former inmate's punishment and that, as a result, the former inmate was not an "employee" under O.C.G.A. § 34-9-1(2) at the time of the former inmate's injury while at the bakery. Even when the former inmate was physically at the bakery, the former inmate was still legally confined as an inmate, and the Department of Corrections retained tight control over the inmate. Clarke v. Country Home Bakers, 294 Ga. App. 302, 669 S.E.2d 177 (2008).

Injury by Accident Arising Out of and in Course of Employment

1. In General

Factual issues existed precluding summary judgment. — Trial court properly denied summary judgment to an employer in a wrongful death action because questions of fact existed as to whether the deceased employee had left work for the day or was merely on a break and whether workers' compensation was applicable following the employee being shot and killed at a convenience store associated with the employer. Dixie Roadbuilders, Inc. v. Sallet, 318 Ga. App. 228, 733 S.E.2d 511 (2012).

Presumption that accident compensable.

Superior court erred in substituting its own judgment for that of the Appellate Division of the State Board of Worker's Compensation because an employee's right knee was injured when the employee turned around, and the superior court had to defer to the Appellate Division's finding that the employee was not exposed to any risk unique to the employee's employment by standing and turning, when the fact-finding body had to remain the final arbiter of the compensability of the injury and of whether the employee's disability arose out of the employment as well as in the course of employment; the superior court also erred by reversing the Board's factual findings and concluding that the employee was entitled to benefits under

an alternative theory because the facts were disputed. St. Joseph's Hosp. v. Ward, 300 Ga. App. 845, 686 S.E.2d 443 (2009), cert. denied, No. S10C0490, 2010 Ga. LEXIS 294 (Ga. 2010).

2. Arising Out of Employment

Causal connection between employment and injury.

Evidence when construed in an employee's favor authorized the State Board of Workers' Compensation to find that the employee's knee dislocation arose out of the employee's employment, O.C.G.A. § 34-9-1(4), and the trial court erred in reversing a benefit award. Bending over to remove an object from the floor, even when the object was the employee's own diuretic pill, was incidental to the character of the employee's employment as a custodian. Harris v. Peach County Bd. of Comm'rs, 296 Ga. App. 225, 674 S.E.2d 36 (2009).

4. Accidents Held to Arise Out of and in Course of Employment

Employee stopping rolling car. — State Board of Workers' Compensation erred in finding that an employee's accident did not arise out of employment under the Workers' Compensation Act, O.C.G.A. § 34-9-1(4), because the decision was based upon an erroneous theory regarding what conduct constituted a deviation from employment that would bar compensation under the Act; the decision contravened the humanitarian purpose of the Act, O.C.G.A. § 34-9-23, and distorted the definition of a deviation from employment to say that the employee's attempt to stop a rolling car was a purely personal mission because at the instant the employee's car began to roll, the employee was on duty. Stokes v. Coweta County Bd. of Educ., 313 Ga. App. 505, 722 S.E.2d 118 (2012), cert. denied, No. S12C0880, 2012 Ga. LEXIS 473 (Ga. 2012).

5. Accidents Held Not to Arise Out of and in Course of Employment

Feigning brain damage from exposure to wallpaper glue fumes. — Superior court erred in reversing a decision of an ALJ denying workers' compensation to an employee who claimed permanent brain injury from exposure to wallpaper glue at work; the ALJ was authorized to conclude from observing the employee's testimony and from the medical evidence that the employee's symptoms were feigned or psychological. Hughston Orthopedic Hosp. v. Wilson, 306 Ga. App. 893, 703 S.E.2d 17 (2010).

6. Entering and Leaving Premises and Preparing for Work

Accident involving only means of ingress and egress.

Ingress/egress rule applied and an employee's death from being struck by a train was compensable because the employee had no alternative route to the building but to cross the tracks, the entrance road crossing the railroad track was part of the leased business premises, the employee arrived just before the employee's shift started, and the employer had control over the entrance road pursuant to the lease. Bonner-Hill v. Southland Waste Sys. of Ga., Inc., 330 Ga. App. 151, 767 S.E.2d 803 (2014).

8. Traveling to and from Work

In general.

Trial court properly upheld the denial of two employees' claims for workers' compensation coverage because the motor vehicle accident in which the employees were involved in on the way to work was not compensable as there was no causal connection between the employees' employment and the accident; thus, the employees' injuries did not arise out of employment. Medical Ctr., Inc. v. Hernandez, 319 Ga. App. 335, 734 S.E.2d 557 (2012).

12. Disease Resulting from Accident

Pneumonia unrelated to fume exposure incident. — Worker was properly denied workers' compensation benefits and terminated from employment for failing to return from a leave of absence because evidence supported the findings that the worker recovered from the chemical fume exposure incident based on a family doctor releasing the worker to return to work with no restrictions and that the pneumonia the worker suffered was unrelated to the exposure incident. Royal

Injury by Accident Arising Out of and in Course of Employment (Cont'd)
12. Disease Resulting from Accident (Cont'd)

v. Pulaski State Prison, 324 Ga. App. 275, 750 S.E.2d 179 (2013).

14. Injury Due to Exertion or Aggravation of Condition

B. Heart Attacks

Presumption as to death by heart attack.

Decision granting a widow workers' compensation death benefits was upheld as the unexplained death presumption applied in that the employee's heart failure at work was unexplained and, once the unexplained death presumption arose, no further proof was required to satisfy O.C.G.A. § 34-9-1 to establish the injury. Keystone Auto. v. Hall, 292 Ga. App. 645, 665 S.E.2d 392 (2008).

C. Cerebral Hemorrhages

Stroke not work related injury. — Because the decision of the Appellate Division of the State Board of Workers' Compensation did not apply the wrong standard of proof, and because there was evidence in the record to support the appellate division's ruling that the claimant did not suffer a compensable, work-related injury as the claimant did not show by a preponderance of the evidence that the claimant suffered a stroke, and that, even if the claimant had, the stroke was not caused by work stress, the superior court was required to accept the appellate division's findings and the court's decision affirming the administrative law judge's denial of benefits. Save-A-Lot Food Stores v. Amos, 331 Ga. App. 517, 771 S.E.2d 192 (2015).

RESEARCH REFERENCES

ALR. — Workers' compensation: nonathlete students as covered employees, 33 ALR6th 251.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — compensability under particular circumstances, 39 ALR6th 445.

34-9-2. Applicability of chapter to employers and employees — Generally.

JUDICIAL DECISIONS

Analysis

Fewer Than Three Employees Regularly in Service

Fewer Than Three Employees Regularly in Service

Election to be bound by Workers' Compensation Act. — Trial court properly granted a painting company summary judgment in a wrongful death action because the company was immune from suit pursuant to the exclusivity provision of the Workers' Compensation Act (WCA), O.C.G.A. § 34-9-11(c), when the company voluntarily elected to be bound by the WCA by contracting with an employment agency; although the company conceded that the company had regularly in service less than three employees, the company signed the agency's "Confirmation of Rates and Services," specifically agreeing to pay the rate for temporary employees, which included coverage for workers' compensation benefits and elected to be bound by the WCA. Sabellona v. Albert Painting, Inc., 303 Ga. App. 842, 695 S.E.2d 307 (2010).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutory provisions exempting or otherwise restricting farm and agricultural workers from worker's compensation coverage, 40 ALR6th 99.

34-9-8. Liability of principal contractor or subcontractor for employee injuries.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration

"Statutory employer" of subcontractor's employee.

Since the first subsidiary company undertook no contractual obligation to perform work on the project for another, but merely hired the contractor to perform the project work, the first subsidiary company was not a statutory employer liable for compensation to the injured employee under O.C.G.A. § 34-9-8, and had no immunity from suit under O.C.G.A. § 34-9-11. Ramcke v. Ga. Power Co., 306 Ga. App. 736, 703 S.E.2d 13 (2010), cert. denied, No. S11C0482, 2011 Ga. LEXIS 583 (Ga. 2011).

Coverage.

Employer may not bypass workers' compensation laws simply by designating certain employees as independent contractors. Amtrust N. Am., Inc. v. Smith, 315 Ga. App. 133, 726 S.E.2d 628 (2012).

Insurer entitled to recover premiums due under workers' compensation insurance policy. — Trial court did not err in granting an insurer summary judgment in the insurer's action to recover premiums due under a workers' compensation insurance policy the insurer issued to an insured because the insurer submitted evidence on the number of workers on the insured's payroll, the amount of the payroll, the classifications of those workers, and the applicable rates; the insured did not come forward with any evidence to show that any of the workers listed were covered by other workers' compensation insurance, and therefore, did not show that any of the workers had been "misclassified" by the audit. Dennis Perry Homes, Inc. v. Companion Prop. & Cas. Ins. Co., 311 Ga. App. 706, 716 S.E.2d 798 (2011).

Liability

2. Tort Liability

Principal contractor entitled to tort immunity.

Trial court erred in ruling that an employee's tort claim against a general contractor was not barred by the exclusive-remedy provision of the Workers' Compensation Act, O.C.G.A. § 34-9-11(a), because the general contractor was potentially liable to the employee for workers' compensation benefits and, consequently, was immune from tort liability; pursuant to the Workers' Compensation Act, O.C.G.A. § 34-9-8(a), the general contractor was the employee's statutory employer at the time of the accident because the employee was hired

Liability (Cont'd)
2. Tort Liability (Cont'd)

by a subcontractor and was working on the construction project site at the time that of the injury, and the subcontractor was hired by the general contractor to perform work as a subcontractor on the construction project. Vratsinas Constr. Co. v. Chitwood, 314 Ga. App. 357, 723 S.E.2d 740 (2012).

Illustrative Examples

Owner of premises also contractor. — Even though a construction company was the owner of land on which the company was building a home, the company was also acting as a general contractor for its customer, because it was building the home to the customer's specifications. Thus, under O.C.G.A. § 34-9-8, the company was the statutory employer of a subcontractor's employee and was immune from tort liability to the employee under O.C.G.A. § 34-9-11, the exclusivity provision of the Georgia Workers' Compensation Act. Creeden v. Fuentes, 296 Ga. App. 96, 673 S.E.2d 611 (2009).

Because a hotel owner was not a "principal contractor" within the meaning of O.C.G.A. § 34-9-8, an employee of a subcontractor who was injured while doing work at the hotel was not barred under O.C.G.A. §§ 34-9-8(a) and 34-9-11(a) from maintaining a tort action against the owner. PHF II Buckhead LLC v. Dinku, 315 Ga. App. 76, 726 S.E.2d 569 (2012), cert. denied, No. S12C1257, 2012 Ga. LEXIS 1041 (Ga. 2012).

34-9-9. Relief from penalty for failure or neglect to perform statutory duty.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of provisions of workers' compensation act for additional compensation because of failure to comply with specific requirement of statute or regulation by public for protection of workers, 31 ALR6th 199.

34-9-10. Relief of employer from obligations under chapter.

JUDICIAL DECISIONS

Contracts releasing employer from obligations.
Employee was bound by a settlement agreement for a discrimination case that the employee signed upon advice of counsel; however, the settlement could not permit the release of the employee's workers' compensation claims pursuant to O.C.G.A. §§ 34-9-10 and 34-9-15 when the settlement had not been approved by the Workers' Compensation Board. Young v. JCB Mfg., No. 407CV043, 2008 U.S. Dist. LEXIS 74108 (S.D. Ga. Aug. 25, 2008).

34-9-11. Exclusivity of rights and remedies granted to employee under chapter; immunity granted to construction design professionals.

(a) The rights and the remedies granted to an employee by this chapter shall exclude and be in place of all other rights and remedies of such employee, his or her personal representative, parents, dependents, or next of kin, and all other civil liabilities whatsoever at common law or otherwise, on account of such injury, loss of service, or death;

provided, however, that the employer may be liable to the employee for rights and remedies beyond those provided in this chapter by expressly agreeing in writing to specific additional rights and remedies; provided, further, however, that the use of contractual provisions generally relating to workplace safety, generally relating to compliance with laws or regulations, or generally relating to liability insurance requirements shall not be construed to create rights and remedies beyond those provided in this chapter. No employee shall be deprived of any right to bring an action against any third-party tort-feasor, other than an employee of the same employer or any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits, and other than a construction design professional who is retained to perform professional services on or in conjunction with a construction project on which the employee was working when injured, or any employee of a construction design professional who is assisting in the performance of professional services on the construction site on which the employee was working when injured, unless the construction design professional specifically assumes by written contract the safety practices for the project. The immunity provided by this subsection to a construction design professional shall not apply to the negligent preparation of design plans and specifications, nor shall it apply to the tortious activities of the construction design professional or the employees of the construction design professional while on the construction site where the employee was injured and where those activities are the proximate cause of the injury to the employee or to any professional surveys specifically set forth in the contract or any intentional misconduct committed by the construction design professional or his or her employees.

(b) As used in subsection (a) of this Code section, the term "construction design professional" means any person who is an architect, professional engineer, landscape architect, geologist, or land surveyor who has been issued a license pursuant to Chapter 4, 15, 19, or 23 of Title 43 or any corporation organized to render professional services in Georgia through the practice of one or more such technical professions as architecture, professional engineering, landscape architecture, geology, or land surveying.

(c) The immunity provided by this subsection shall apply and extend to the businesses using the services of a temporary help contracting firm, as such term is defined in Code Section 34-8-46, or an employee leasing company, as such term is defined in Code Section 34-8-32, when the benefits required by this chapter are provided by either the temporary help contracting firm or the employee leasing company or

the business using the services of either such firm or company. A temporary help contracting firm or an employee leasing company shall be deemed to be a statutory employer for the purposes of this chapter. (Ga. L. 1920, p. 167, § 12; Code 1933, § 114-103; Ga. L. 1972, p. 929, § 1; Ga. L. 1974, p. 1143, § 1; Ga. L. 1980, p. 1145, § 2; Ga. L. 1982, p. 3, § 34; Ga. L. 1990, p. 1164, § 1; Ga. L. 1995, p. 352, § 1; Ga. L. 2015, p. 1079, § 1/HB 412.)

The 2015 amendment, effective July 1, 2015, in subsection (a), in the first sentence, and at the beginning of the second sentence, substituted "exclude and be in place of all other rights and remedies of such employee, his or her personal representative, parents, dependents, or next of kin, and all other civil liabilities whatsoever at common law or otherwise, on account of such injury, loss of service, or death; provided, however, that the employer may be liable to the employee for rights and remedies beyond those provided in this chapter by expressly agreeing in writing to specific additional rights and remedies; provided, further, however, that the use of contractual provisions generally relating to workplace safety, generally relating to compliance with laws or regulations, or generally relating to liability insurance requirements shall not be construed to create rights and remedies beyond those provided in this chapter. No employee shall" for "exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service, or death; provided, however, that no employee shall", and added "or her" at the end of the last sentence.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration

Limitation of benefits to dependents constitutional. — Summary judgment was properly granted to the employer with regard to a mother's claim for benefits for the death of a son under the provisions of the Workers' Compensation Act, O.C.G.A. § 34-9-1 et seq., because the mother was a non-dependent heir and the Act's limitation on the recovery of non-dependent heirs under O.C.G.A. § 34-9-265(b)(1) did not violate the mother's constitutional rights to due process and equal protection. Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Because the Workers' Compensation Act's, O.C.G.A. § 34-9-1 et seq., differing treatment of dependent and non-dependent heirs is not irrational and serves the legitimate government purpose of workers' compensation, the Act's limitation on recovery by non-dependent heirs does not violate the due process or equal protection rights guaranteed by the United States Constitution. Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Cited in Archer W. Contrs., Ltd. v. Es-

tate of Estate of Pitts, 292 Ga. 219, 735 S.E.2d 772 (2012); Estate of Pitts v. City of Atlanta, 323 Ga. App. 70, 746 S.E.2d 698 (2013).

Employer's Liability

Tort immunity of principal or general contractor.

Trial court erred in ruling that an employee's tort claim against a general contractor was not barred by the exclusive-remedy provision of the Workers' Compensation Act, O.C.G.A. § 34-9-11(a), because the general contractor was potentially liable to the employee for workers' compensation benefits and, consequently, was immune from tort liability; pursuant to the Workers' Compensation Act, O.C.G.A. § 34-9-8(a), the general contractor was the employee's statutory employer at the time of the accident because the employee was hired by a subcontractor and was working on the construction project site at the time of the injury, and the subcontractor was hired by the general contractor to perform work as a subcontractor on the construction project. Vratsinas Constr. Co. v. Chitwood, 314 Ga. App. 357, 723 S.E.2d 740 (2012).

Negligent employee of a borrowing employer is an "employee of the same employer," etc.

Trial court erred in granting summary judgment to a coworker in a negligence action because the employee pointed to evidence showing there was a genuine dispute about whether the coworker was acting as an employee for the parties' employer at the time of the accident; the coworker came to a different subdivision, in a different city to shoot the coworker's new guns, an activity that the employer did not condone. Smith v. Ellis, 291 Ga. 566, 731 S.E.2d 731 (2012).

Factual issues existed precluding summary judgment. — Trial court properly denied summary judgment to an employer in a wrongful death action because questions of fact existed as to whether the deceased employee had left work for the day or was merely on a break and whether workers' compensation was applicable following the employee being shot and killed at a convenience store associated with the employer. Dixie Roadbuilders, Inc. v. Sallet, 318 Ga. App. 228, 733 S.E.2d 511 (2012).

Insurance Carriers

Entitlement to tort immunity.

Because an insurer was entitled to the same immunity granted to its wholly-owned subsidiary under O.C.G.A. § 34-9-11(a), and an injured employee failed to create a triable issue of fact in response to the insurer's affidavit testimony in support of its summary judgment motion, the insurer was properly granted summary judgment as to the issue of its liability for the employee's injuries. Moreover, the undisputed evidence showed that the insurer would be the payor of any eligible worker's compensation benefits awarded to the employee. Coker v. Great Am. Ins. Co., 290 Ga. App. 342, 659 S.E.2d 625 (2008).

Illustrative Cases

Employee's suit for emotional distress claim barred. — Former employee's intentional infliction of emotional distress claim against the employee's former employer and former supervisor was barred by the exclusivity provision in O.C.G.A. § 34-9-11(a) because the psychic injury was ancillary to a prior physical work injury, arising only after the supervisor required the employee to perform tasks that exceeded the employee's work restrictions stemming from the physical injury. Coca-Cola Co. v. Parker, 297 Ga. App. 481, 677 S.E.2d 361 (2009), cert. denied, No. S09C1384, 2009 Ga. LEXIS 799 (Ga. 2009).

Wrongful death action.

Trial court properly granted a painting company summary judgment in a wrongful death action because the company was immune from suit pursuant to the exclusivity provision of the Workers' Compensation Act (WCA), O.C.G.A. § 34-9-11(c), when the company voluntarily elected to be bound by the WCA by contracting with an employment agency; although the company conceded that it had regularly in service less than three employees, the company signed the agency's "Confirmation of Rates and Services," specifically

Illustrative Cases (Cont'd)

agreeing to pay the rate for temporary employees, which included coverage for workers' compensation benefits and elected to be bound by the WCA. Sabellona v. Albert Painting, Inc., 303 Ga. App. 842, 695 S.E.2d 307 (2010).

Estate of killed court reporter could bring suit against county sheriff. — Trial court properly denied a sheriff's motion to dismiss the negligence suit brought against the sheriff and eight other employees of the sheriff's department arising from the death of a court reporter as the sheriff was an elected official and was not a county employee; therefore, the exclusive remedy provision of the Workers' Compensation Act, O.C.G.A. § 34-9-11(a), did not bar the suit. Freeman v. Brandau, 292 Ga. App. 300, 664 S.E.2d 299 (2008).

Employee kidnapped from employer's parking lot while arriving for work. — Trial court properly dismissed an employee's negligence suit against an employer arising from an incident in which the employee was kidnapped from the parking lot of the store while arriving for work and sexually assaulted as the claim arose out of employment; thus, the suit was barred by the exclusive remedy provision of the Georgia Workers' Compensation Act, O.C.G.A. § 34-9-11(a). Dawson v. Wal-Mart Stores, Inc., 324 Ga. App. 604, 751 S.E.2d 426 (2013).

Owner of premises also contractor and statutory employer. — Even though a construction company was the owner of land on which it was building a home, it was also acting as a general contractor for its customer, because it was building the home to the customer's specifications. Thus, under O.C.G.A. § 34-9-8, the company was the statutory employer of a subcontractor's employee and was immune from tort liability to the employee under O.C.G.A. § 34-9-11, the exclusivicy provision of the Georgia Workers' Compensation Act. Creeden v. Fuentes, 296 Ga. App. 96, 673 S.E.2d 611 (2009).

Because a hotel owner was not a "principal contractor" within the meaning of O.C.G.A. § 34-9-8, an employee of a subcontractor who was injured while doing work at the hotel was not barred under O.C.G.A. §§ 34-9-8(a) and 34-9-11(a) from maintaining a tort action against the owner. PHF II Buckhead LLC v. Dinku, 315 Ga. App. 76, 726 S.E.2d 569 (2012), cert. denied, No. S12C1257, 2012 Ga. LEXIS 1041 (Ga. 2012).

Statutory employer not found amongst contractors. — Since the first company undertook no contractual obligation to perform work on the project for another, but merely hired the independent contractor to perform the project work, the first subsidiary company was not a statutory employer liable for compensation to the injured employee under O.C.G.A. § 34-9-8, and had no immunity from suit under O.C.G.A. § 34-9-11. Ramcke v. Ga. Power Co., 306 Ga. App. 736, 703 S.E.2d 13 (2010), cert. denied, No. S11C0482, 2011 Ga. LEXIS 583 (Ga. 2011).

Doctors employed at on-site medical facility were co-workers. — Trial court erred by denying an employer's motion for summary judgment in a negligence suit filed by a worker alleging a failure to diagnosis the worker's cancer on the part of the doctors employed by the employer at an on-site medical facility as the doctors were co-employees of the worker and, therefore, the tort action was barred pursuant to the exclusivity provision of the Georgia Worker's Compensation Act, O.C.G.A. § 34-9-11(a). Rheem Mfg. v. Butts, 292 Ga. App. 523, 664 S.E.2d 878 (2008).

Remedies

Exclusivity of remedy.

Trial court did not err in dismissing a sheriff's deputy's widow's claims against the sheriff and the deputy's fellow deputies on the basis that the Workers' Compensation Act provided her exclusive remedy under O.C.G.A. § 34-9-11(a). The sheriff was the deputy's "employer" under Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), and O.C.G.A. § 34-9-1(3). Teasley v. Freeman, 305 Ga. App. 1, 699 S.E.2d 39 (2010).

RESEARCH REFERENCES

ALR. — Construction and application of exclusive remedy rule under state workers' compensation statutes with respect to liability for injury or death of employee as passenger in employer-provided vehicle — requisites for, and factors affecting, applicability and who may invoke rule, 42 ALR6th 545.

Construction and application of exclusive remedy rule under state workers' compensation statute with respect to liability for injury or death of employee as passenger in employer-provided vehicle — against whom may rule be invoked and application of rule to particular situations and employees, 43 ALR6th 375.

Exclusive remedy provision of state workers' compensation statute as applied to injuries sustained during or as the result of horseplay, joking, fooling, or the like, 44 ALR6th 545.

34-9-11.1. Employee's or survivor's right of action against person other than employer; subrogation lien of employer; rights of employer or insurer upon failure of employee to bring action; attorney fees; retroactive application.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010).

JUDICIAL DECISIONS

Employer was entitled to intervene in workers' compensation case. — Employer was also entitled to intervene in a workers' compensation action pursuant to O.C.G.A. § 9-11-24(a)(2) because the employer claimed an interest in the property or transaction that was the subject of the suit because the employer's subrogation rights were not protected by the existing parties to the employee's suit, and because the trial court's denial of the employer's motion to intervene disposed of the only legal remedy for that claim. Kroger v. Taylor, 320 Ga. App. 298, 739 S.E.2d 767 (2013).

Effect of settlement between employee and tortfeasor on subrogation lien.

After an employee, who was injured in a work related auto accident, settled a personal injury claim against the tortfeasors for a lump sum, the employer's and the workers' compensation insurer's subrogation lien was to be dismissed because they came forward with no evidence that the trial court erred in determining that the employee had not been fully compensated. Austell HealthCare, Inc. v. Scott, 308 Ga. App. 393, 707 S.E.2d 599 (2011).

Grant of the motion to enforce a subrogation lien was affirmed because the workers' compensation insurer was intentionally excluded from the settlement negotiations, was not a party to the settlement agreement, and had never consented to the agreement. Thus, the insurer was not bound by the settlement agreement's statement that the injured employee and the company "acknowledge" that the employee had not been fully compensated for the employee's injuries. SunTrust Bank v. Travelers Prop. Cas. Co. of Am., 321 Ga. App. 538, 740 S.E.2d 824 (2013).

Subrogation not authorized.

As an employee who was injured in Georgia was entitled to receive workers' compensation benefits in Georgia, Georgia workers' compensation law governed an insurer's subrogation claim under O.C.G.A. § 34-9-11.1(b) against the employee's settlement of a personal injury action; as Tennessee workers' compensa-

tion benefits were paid to the employee, the insurer was not entitled to subrogation. Liberty Mut. Ins. Co. v. Roark, 297 Ga. App. 612, 677 S.E.2d 786 (2009).

Tennessee employer's subrogation action against third parties who injured its employee was precluded by O.C.G.A. § 34-9-11.1(b), which limited the right of subrogation to employers who paid benefits under the Georgia Workers' Compensation Act, and the employer had paid benefits under Tennessee law. Performance Food Group, Inc. v. Williams, 300 Ga. App. 831, 686 S.E.2d 437 (2009).

Conflicts of law resolved in favor of Georgia. — In resolving a conflicts of law issue involving a subrogation action by an insurer for a Tennessee corporation, wherein the employee was injured in Georgia and received Tennessee workers' compensation, although the employee was entitled to receive workers' compensation benefits in Georgia, Georgia workers' compensation law governed under O.C.G.A. § 34-9-11.1(b) rather than Tennessee law pursuant to Tenn. Code Ann. § 50-6-112(c). Liberty Mut. Ins. Co. v. Roark, 297 Ga. App. 612, 677 S.E.2d 786 (2009).

In a Tennessee employer's subrogation action against third parties who injured its employee, Georgia law governed because the employee was injured in Georgia. Performance Food Group, Inc. v. Williams, 300 Ga. App. 831, 686 S.E.2d 437 (2009).

Cited in Toomer v. Allstate Ins. Co., 292 Ga. App. 60, 663 S.E.2d 763 (2008); Woodcraft by MacDonald, Inc. v. Ga. Cas. & Sur. Co., 293 Ga. 9, 743 S.E.2d 373 (2013).

34-9-12. Employer's record of injuries; availability of board records; supplementary report on termination of disability; penalties; routine reports.

(a) Every employer subject to the provisions of this chapter relative to the payment of compensation shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on blanks approved by the board. Within ten days after notice, as provided in Code Section 34-9-80, of the occurrence of an injury to an employee requiring medical or surgical treatment or causing his absence from work for more than seven days, a report thereof shall be made in writing and mailed to the board on blanks to be procured from the board for this purpose.

(b) The records of the board, insofar as they refer to accidents, injuries, and settlements, shall not be open to the public but only to the parties satisfying the board of their interest in such records and their right to inspect them. The board shall provide data contained on Employers' First Report of Injury forms reporting fatalities to the Georgia Department of Labor and the United States Department of Labor for use in the Census of Fatal Occupational Injuries Program. The board shall provide data to such other state and federal governmental entities or departments as required by law. Under such reasonable rules and regulations as the board may adopt, the records of the board as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claimant, to an employer or its insurance carrier which is called upon to pay compensation, medical expenses, or funeral expenses, and to any party

at interest, except that the board may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records. Nothing in this subsection shall prohibit the board or its designees from publishing decisions of the board, provided adequate security measures have been taken to protect the identity and privacy of the parties.

(c) Upon the termination of the disability of the injured employee, the employer shall make a supplementary report to the board on blanks to be procured from the board for the purpose. The report shall contain the name, nature, and location of the business of the employer; the name, age, sex, and wages and occupation of the injured employee; and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

(d) Any employer who refuses or willfully neglects to make the report required by subsection (a) of this Code section shall be subject to a penalty of not more than $100.00 for each refusal or instance of willful neglect, to be assessed by the board, a member, or an administrative law judge in an open hearing, with the right of review as in other cases. In the event the employer has sent the report to the insurance carrier for forwarding to the board, the insurance carrier willfully neglecting or failing to forward the report shall be liable and shall pay the penalty.

(e) Every employer shall, upon request of the board, report the number of his employees, hours of their labor, and number of days of operation of business. (Ga. L. 1920, p. 167, § 65; Ga. L. 1923, p. 92, § 6; Ga. L. 1929, p. 358, § 1; Code 1933, § 114-716; Ga. L. 1957, p. 493, § 1; Ga. L. 1963, p. 141, § 16; Ga. L. 1975, p. 198, § 12; Ga. L. 1988, p. 1679, § 2; Ga. L. 1993, p. 1396, § 1; Ga. L. 1994, p. 97, § 34; Ga. L. 2002, p. 846, § 1; Ga. L. 2010, p. 126, § 1/HB 1101.)

The 2010 amendment, effective July 1, 2010, added the last sentence in subsection (b).

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

34-9-13. Definitions; persons presumed next of kin; apportionment of payments among partial and total dependents; termination of dependency.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Constitutionality of 1989 amendment to subsection (e). — 1989 amendment to O.C.G.A. § 34-9-13(e) is unconstitutional since the alteration greatly limited availability of workers' compensation benefits to surviving spouses and was enacted in legislation that had the object and title reflecting a purpose of correcting only grammatical errors and to modernize language in various statutes-all non-substantive alterations; 1989 amendment to § 34-9-13(e), which greatly limited the availability of benefits to surviving spouses, was a substantive alteration made in violation of Ga. Const. 1983, Art. III, Sec. V, Para. III. Sherman Concrete Pipe Co. v. Chinn, 283 Ga. 468, 660 S.E.2d 368 (2008).

34-9-15. Procedure for settlement between parties generally; approval by board; finality of settlement; lump sum settlements.

(a) Nothing contained in this chapter shall be construed so as to prevent settlements made by and between the employee and employer but rather to encourage them, so long as the amount of compensation and the time and manner of payment are in accordance with this chapter. A workers' compensation insurer shall not be authorized to settle a claim on behalf of its insured employer without giving prior notice to such employer of the terms of the settlement agreement. A copy of any such settlement agreement shall be filed by the employer with the board, and no such settlement shall be binding until approved by the board. Whenever it shall appear to the board, by stipulation of the parties or otherwise, that there is a bona fide dispute as to facts, the determination of which will materially affect the right of the employee or dependent to recover compensation or the amount of compensation to be recovered, or that there is a genuine dispute as to the applicability of this chapter, and it further appears that the parties have agreed upon a settlement between themselves, which settlement gives due regard and weight to the conflicting evidence available relating to the disputed facts or to the questions as to the applicability of this chapter, then, upon such determination, the board shall approve the settlement and enter an award conforming to the terms thereof even though such settlement may provide for the payment of compensation in a sum or sums less than would be payable if there were no conflict as to the employee's right to recover compensation. When such settlement has been agreed upon and approved by the board, it shall constitute a complete and final disposition of all claims on account of the incident, injury, or injuries referred to therein, and the board shall not be authorized to enter upon any award subsequent to such board approval amending, modifying, or changing in any manner the settlement, nor shall the settlement be subject to review by the board under Code Section 34-9-104.

(b) The board shall be authorized to approve a stipulated settlement between the parties which concludes that there is no liability under this

chapter and to retain jurisdiction to enforce any agreement which resolves, in whole or in part, a claim filed with the board. If payments required under such an agreement are not made within 20 days, the board may assess a penalty of 20 percent in the same manner as provided in Code Section 34-9-221. When such settlement has been agreed upon and approved by the board, it shall constitute a complete and final disposition of all claims on account of the incident, injury, or injuries referred to therein, and the board shall not be authorized to enter upon any award subsequent to such board approval amending, modifying, or changing in any manner the settlement, nor shall the settlement be subject to review by the board under Code Section 34-9-104.

(c) The board or any party to the settlement agreement may require that the settlement documents contain language which prorates the lump sum settlement over the life expectancy of the injured worker. When such an agreement has been approved, neither the weekly compensation rate paid throughout the case nor the maximum statutory weekly rate applicable to the injury shall apply. No compensation rate shall exceed the maximum statutory weekly rate as of the date of injury. Instead, the prorated rate set forth in the approved settlement documents shall control and become the rate for that case. This subsection shall be retroactive in effect. (Ga. L. 1920, p. 167, § 19; Code 1933, § 114-106; Ga. L. 1963, p. 141, § 2; Ga. L. 1975, p. 190, § 2; Ga. L. 1992, p. 1942, § 3; Ga. L. 2000, p. 1321, § 2; Ga. L. 2012, p. 801, § 1/HB 971.)

The 2012 amendment, effective July 1, 2012, substituted the present first sentence of subsection (c) for the former first sentence, which read: "The parties by agreement and with the approval of the board may enter into a compromise lump sum settlement resolving all issues which prorates the lump sum settlement over the life expectancy of the injured worker."

Law reviews. — For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Agreement not binding until approved.

Employee was bound by a settlement agreement for a discrimination case that the employee signed upon advice of counsel; however, the settlement could not permit the release of the employee's workers' compensation claims pursuant to O.C.G.A. §§ 34-9-10 and 34-9-15 when the settlement had not been approved by the Workers' Compensation Board. Young v. JCB Mfg., No. 407CV043, 2008 U.S. Dist. LEXIS 74108 (S.D. Ga. Aug. 25, 2008).

Penalty for late payment of benefits improperly reversed. — It was error to reverse a penalty assessed against an employer under O.C.G.A. § 34-9-221(f) on the basis of a finding that O.C.G.A. § 34-9-15(b) gave the board discretion not to assess the penalty because the employee and the employer reached an approved liability stipulated settlement after a compensable injury was established,

and the employer did not pay benefits within 20 days of the adoption of that agreement by the Workers' Compensation Board and the issuance of an award based thereon; O.C.G.A. § 34-9-15(b) only applied to no-liability stipulated settlements, and the parties entered into an approved liability stipulated settlement. Brewer v. Wellstar Health System, 314 Ga. App. 234, 723 S.E.2d 526 (2012).

Cited in Smith v. Ellis, 291 Ga. 566, 731 S.E.2d 731 (2012).

34-9-17. Grounds for denial of compensation; burden of proof in establishing grounds for denial.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

34-9-21. Penalty for receiving unentitled to benefits.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 34-9-21 are offenses for which those charged are to be fingerprinted. 2011 Op. Att'y Gen. No. 2011-1.

34-9-23. Liberal construction of chapter; purpose.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

JUDICIAL DECISIONS

Board's decision based on erroneous theory. — State Board of Workers' Compensation erred in finding that an employee's accident did not arise out of employment under the Workers' Compensation Act, O.C.G.A. § 34-9-1(4), because the decision was based upon an erroneous theory regarding what conduct constituted a deviation from employment that would bar compensation under the Act; the decision contravened the humanitarian purpose of the Act, O.C.G.A. § 34-9-23, and distorted the definition of a deviation from employment to say that the employee's attempt to stop a rolling car was a purely personal mission because at the instant the employee's car began to roll, the employee was on duty. Stokes v. Coweta County Bd. of Educ., 313 Ga. App. 505, 722 S.E.2d 118 (2012), cert. denied, No. S12C0880, 2012 Ga. LEXIS 473 (Ga. 2012).

Cited in Keystone Auto. v. Hall, 292 Ga. App. 645, 665 S.E.2d 392 (2008); Crossmark, Inc. v. Strickland, 310 Ga. App. 303, 713 S.E.2d 430 (2011); Dixie Roadbuilders, Inc. v. Sallet, 318 Ga. App. 228, 733 S.E.2d 511 (2012).

RESEARCH REFERENCES

ALR. — Right to workers' compensation for injury suffered by employee while driving employer's vehicle, 28 ALR6th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — compensability under particular circumstances, 39 ALR6th 445.

Right to compensation under state workers' compensation statute for injuries sustained during or as result of horseplay, joking, fooling, or the like, 41 ALR6th 207.

Injury to employee as arising out of or in course of employment for purposes of state workers' compensation statute — effect of employer-provided living quarters, room and board, or the like, 42 ALR6th 61.

34-9-24. Fraud and compliance unit; creation and duties; limitation on liability; authority; whistle blower protection.

Law reviews. — For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

JUDICIAL DECISIONS

No evidence of fraud in filing complaint. — Former employer was not liable for filing a fraud complaint with the Georgia State Board of Workers' Compensation because the allegations contained in the complaint were true and, thus, the employer did not commit fraud when the employer filed the complaint. Garcia v. Shaw Indus., Inc., 321 Ga. App. 48, 741 S.E.2d 285 (2013).

Insurer entitled to recover premiums due under workers' compensation insurance policy. — Trial court did not err in granting an insurer summary judgment in the insurer's action to recover premiums due under a workers' compensation insurance policy the insurer issued to an insured because the insurer submitted evidence on the number of workers on the insured's payroll, the amount of the payroll, the classifications of those workers, and the applicable rates; the insured did not come forward with any evidence to show that any of the workers listed were covered by other workers' compensation insurance, and therefore, did not show that any of the workers had been "misclassified" by the audit. Dennis Perry Homes, Inc. v. Companion Prop. & Cas. Ins. Co., 311 Ga. App. 706, 716 S.E.2d 798 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Enforcement of aggravated identity fraud statute. — Investigators of the Enforcement Division who are certified as peace officers may enforce the aggravated identity fraud statute, O.C.G.A. § 16-9-121.1, by arrest and the execution of search warrants provided that the arrest and search is the result of a criminal investigation of an alleged violation of the workers' compensation laws of O.C.G.A. Ch. 9, T. 34. 2012 Op. Att'y Gen. No. 12-3.

ARTICLE 2

ADMINISTRATION

34-9-40. State Board of Workers' Compensation created; appointment of members; powers and duties of board generally.

There is created and established within the executive branch a board to be known as the State Board of Workers' Compensation, composed of three members who shall be appointed by the Governor for a term of four years. Each member shall hold office until his or her successor

shall have been appointed and qualified. An individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she shall succeed. The board shall have full authority, power, and the duty to promulgate policies, rules, and regulations for the administration of this chapter. The board may promulgate policies, rules, and regulations concerning the electronic submission to and transmission from the board of documents and filings. Additionally, the board shall have full authority to conduct training seminars for the purpose of educating various employers as to their liability regarding workers' compensation claims. Such seminars may be paid for by the board through funding provided from sources other than appropriations made by the General Assembly. Excess funds generated through seminars may be amended into the board's operating budget as approved by the Office of Planning and Budget. Excess funds generated through seminars not amended into the board's operating budget, as determined by the state auditor, shall lapse to the Office of the State Treasurer. (Ga. L. 1920, p. 167, § 50; Ga. L. 1922, p. 77, § 1; Ga. L. 1931, p. 7, § 108; Code 1933, § 114-701; Ga. L. 1937, p. 230, §§ 3, 5; Ga. L. 1943, p. 167, § 3; Ga. L. 1975, p. 198, § 5; Ga. L. 1988, p. 1679, § 4; Ga. L. 1996, p. 1291, § 7; Ga. L. 1997, p. 143, § 34; Ga. L. 2005, p. 1210, § 2/HB 327; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" at the end of the last sentence.

JUDICIAL DECISIONS

Board of Workers' Compensation is not a court, etc.

Board is not a court authorized to render judgments on contracts or to render a declaratory judgment since the court merely determines the amount of compensation and the time of payment in accordance with the workers' compensation law. Fireman's Fund Ins. Co. v. Crowder, 123 Ga. App. 469, 181 S.E.2d 530 (1971).

Board did not have exclusive jurisdiction. — State Board of Workers' Compensation did not have exclusive jurisdiction over medical care providers' claim against a network administrator as the breach of contract claim did not bear an ancillary relationship to the determination of the employees' statutory workers' compensation rights; rather, the claim alleged a systemic failure within the network. Aetna Workers' Comp Access, LLC v. Coliseum Med. Ctr., 322 Ga. App. 641, 746 S.E.2d 148 (2013).

34-9-52. Officials, personnel, and employees subject to State Personnel Board; compensation of board members and administrative law judges.

(a) All members of the board, including the chairperson thereof, shall be in the unclassified service, as defined in Code Section 45-20-2, and shall not be subject to the rules and regulations of the State Personnel Board. The salaries of all members of the board, including the chair-

person thereof, shall be as provided in this Code section. The chairperson and each member of the board shall receive an annual salary which is equal to 90 percent of the base annual salary plus cost-of-living adjustments provided in Code Section 45-7-4 for each Judge of the Court of Appeals.

(b)(1) Each administrative law judge, whose method of appointment, removal, and terms of office shall remain as now provided by law, shall be in the unclassified service as defined in Code Section 45-20-2, except for certain compensation purposes, shall not be subject to the rules and regulations of the State Personnel Board. The compensation of the administrative law judges shall be fixed by the board based on a pay grade of the general pay schedule issued pursuant to the rules and regulations of the State Personnel Board and each administrative law judge shall be eligible for increases in compensation as established on the general pay schedule, subject to the review and approval of the board.

(2) Each administrative law judge employed by the board shall be entitled to any annual cost-of-living adjustment increases provided for all state employees.

(3) All administrative law judges appointed prior to January 1, 1990, shall be placed on the same pay grade of the general pay schedule and at the step which is the equivalent of one full step above their salary as established on July 1, 1989.

(c) As a cost-of-living adjustment, the annual base salary of all of the members of the board, including the chairperson thereof, shall be increased by the same percentage provided to state officials by subsection (b) of Code Section 45-7-4.

(d) All other officials, personnel, and employees of the board shall be subject to the rules and regulations of the State Personnel Board. (Code 1933, § 114-701.5, enacted by Ga. L. 1975, p. 198, § 6; Ga. L. 1981, p. 114, §§ 1, 2; Ga. L. 1988, p. 1679, § 10; Ga. L. 1989, p. 579, § 1; Ga. L. 1990, p. 1409, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-43/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" throughout this Code section.

The 2012 amendment, effective July 1, 2012, substituted "chairperson" for "chairman" throughout this Code section; substituted "State Personnel Board" for "State Personnel Administration" in the first sentence of subsection (a) and twice in subsection (b); deleted "laws and" preceding "rules and regulations" in the first sentence of subsection (a); designated the existing provisions of subsection (b) as paragraph (b)(1), and, in paragraph (b)(1), substituted "subject to the rules and regulations" for "subject to the laws, rules, and regulations" in the first sentence, and inserted "issued pursuant to the rules and regulations" in the second sentence; redesignated former paragraphs (b)(1) and (b)(2) as present paragraphs (b)(2) and (b)(3), respectively; and substituted the present provisions of subsection (d) for the

former provisions, which read: "All other officials, personnel, and employees of the board are placed under the State Personnel Administration and shall be subject to the laws, rules, and regulations relative to that system."

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

34-9-58. Powers and duties of board as to enforcement of chapter generally.

JUDICIAL DECISIONS

Board did not have exclusive jurisdiction. — State Board of Workers' Compensation did not have exclusive jurisdiction over medical care providers' claim against a network administrator as the breach of contract claim did not bear an ancillary relationship to the determination of the employees' statutory workers' compensation rights; rather, the claim alleged a systemic failure within the network. Aetna Workers' Comp Access, LLC v. Coliseum Med. Ctr., 322 Ga. App. 641, 746 S.E.2d 148 (2013).

34-9-59. Adoption of rules of procedure.

JUDICIAL DECISIONS

Board did not exceed authority. — State Board of Workers' Compensation did not exceed the board's authority under O.C.G.A. §§ 34-9-59 and 34-9-60(a) when the board promulgated Ga. Bd. Workers' Comp. R. 205 as it was not burden-shifting and it did not interfere with the substantive rights of the parties. Mulligan v. Selective HR Solutions, Inc., 289 Ga. 753, 716 S.E.2d 150 (2011).

34-9-60. Rule-making and subpoena powers; service and enforcement of subpoenas.

(a) The board may make rules, not inconsistent with this chapter, for carrying out this chapter. Processes and procedure under this chapter shall be as summary and simple as reasonably possible; provided, however, that, in any proceeding under this chapter where the parties are represented by counsel, the board may require, by rule or regulation, on forms provided by the board, the filing of statements of contentions and points of agreement. The board may promulgate policies, rules, and regulations concerning the electronic submission to and transmission from the board of documents and filings. The board, any member of the board, or any administrative law judge shall have the power for the purposes of this chapter to issue and enforce subpoenas, to administer or cause to have administered oaths, and to examine or cause to be examined such parts of the books and records of

the parties to a proceeding as relate to questions in dispute. Article 2 of Chapter 13 of Title 24 shall govern the issuance and enforcement of subpoenas pursuant to this Code section, except that the board, any member of the board, or any administrative law judge shall carry out the functions of the court and the executive director shall carry out the functions of the clerk of the court. The board shall not, however, have the power to order imprisonment as a means of enforcing a subpoena. The board shall have the power to issue writs of fieri facias in order to collect fines imposed pursuant to this Code section and such writs may be enforced in the same manner as a similar writ issued by a superior court.

(b) In addition to the enforcement procedures provided in subsection (a) of this Code section, the superior court of the county in which the hearing is held shall, on application of the board, any member of the board, or an administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records. (Ga. L. 1920, p. 167, § 53; Ga. L. 1925, p. 282, § 4; Code 1933, § 114-703; Ga. L. 1973, p. 232, § 7; Ga. L. 1988, p. 1679, § 14; Ga. L. 2005, p. 1210, § 3/HB 327; Ga. L. 2011, p. 99, § 47/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Chapter 13" for "Chapter 10" near the beginning of the fifth sentence of subsection (a). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

JUDICIAL DECISIONS

Rule-making powers of the board are confined and limited to procedural and administrative matters.

State Board of Workers' Compensation did not exceed the board's authority under O.C.G.A. §§ 34-9-59 and 34-9-60(a) when the board promulgated Ga. Bd. Workers' Comp. R. 205 as it was not burden-shifting and it did not interfere with the substantive rights of the parties. Mulligan v. Selective HR Solutions, Inc., 289 Ga. 753, 716 S.E.2d 150 (2011).

34-9-61. Publication of blank forms and literature; publication of tabulations of accident reports.

(a) The board shall prepare and cause to be printed and, upon request, shall furnish free of charge to any employee or employer such blank forms and literature as it shall deem necessary to facilitate or promote the efficient administration of this chapter.

(b) The board shall tabulate the accident reports received from employers in accordance with Code Section 34-9-12 and shall publish in

print or electronically the same in its annual report and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications, and the employers' reports themselves shall be private records of the board and shall not be open for public inspection except for the inspection of the parties directly involved, and then only to the extent of such interest. These reports shall not be used as evidence against any employer in any action at law brought by any employee for the recovery of damages or in any proceeding under this chapter. (Ga. L. 1920, p. 167, § 54; Code 1933, § 114-704; Ga. L. 1982, p. 3, § 34; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of subsection (b).

ARTICLE 3

PROCEDURE

Part 1

Claims and Notice of Accident

34-9-80. Procedure for giving notice of accident; requirements of written notice; effect of failure to give notice.

JUDICIAL DECISIONS

Analysis

Reasonable Excuse

1. Determination by Board

Reasonable excuse for not giving employer notice. — There was evidence in the record to support the State Board of Worker's Compensation's conclusion that the driver demonstrated a reasonable excuse for not giving the employer timely notice and that the employer was not prejudiced thereby. McAdoo v. Metropolitan Atlanta Rapid Transit Auth., 326 Ga. App. 788, 755 S.E.2d 278 (2014).

2. rounds for Excuse

Proof of employer's knowledge of injury, etc.

Bus driver's notice of injury was sufficient and timely under O.C.G.A. § 34-9-80, given driver's supervisor's awareness of the pain and difficulty the driver was suffering, even if neither the driver nor the supervisor was aware that the pain was work-related and not a complication of diabetes until months later; further, the employer was not prejudiced by the late notice. Mcadoo v. Metropolitan Atlanta Regional Transit Authori ty, 2014 Ga. App. LEXIS 129 (Mar. 11, 2014).

34-9-82. Limitation period and procedure for filing claims.

Law reviews. — For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

JUDICIAL DECISIONS

Analysis

General Consideration

Notice requirements met. — Former employer's claim that the employer lacked notice and an opportunity to be heard regarding a workers' compensation claimant's lower back injury was without merit because the employer did not show that the notice requirement was breached; the claimant's notice of claim and request for a hearing gave notice that the claimant was seeking medical and temporary total disability benefits as a result of two accidents. R.R. Donnelley v. Ogletree, 312 Ga. App. 475, 718 S.E.2d 825 (2011), cert. denied, No. S12C0480, 2012 Ga. LEXIS 659 (Ga. 2012).

Limitation Period

1. Application of Limitation

Claim for change in condition.
Employee's status, i.e., the employee's legal condition vis-a-vis the employee's employer, was first established when the employer began paying benefits voluntarily and last established when the last benefit payment was made in 2002; therefore, the employee's application for penalties for late benefits payments under O.C.G.A. § 34-9-221 made in 2010, eight years later, was governed by the change in condition statute of limitations, O.C.G.A. § 34-9-104(b), rather than the general statute of limitations, O.C.G.A. § 34-9-82. Metro. Atlanta Rapid Transit Auth. v. Reid, 295 Ga. 863, 763 S.E.2d 695 (2014).

Claims held properly barred.
Claimant's assertions that workers' compensation claims arose out of a single occurrence or that the claimant had been mistaken as to date of injury were unsupported by the record. Given that the claimant asserted injuries on multiple dates, there was some evidence to support the administrative law judge's conclusion that the claimant first asserted a claim for the accident outside of O.C.G.A. § 34-9-82(a)'s one-year limitations period and that the claim was thus barred. McLendon v. Advertising That Works, 292 Ga. App. 677, 665 S.E.2d 370 (2008).

34-9-84. Assignability of claims.

Law reviews. — For article, "Consumer Bankruptcy Panel: Hot Consumer Bankruptcy Plan Issues," see 28 Emory Bankr. Dev. J. 333 (2012).

JUDICIAL DECISIONS

Workers' compensation benefits.
Because the bankruptcy code allowed states to choose whether to use federal exemptions or state exemptions, because Georgia had opted out of the federal exemptions, because the State of Georgia had enacted a provision putting workers' compensation claims beyond a creditors' reach, and because this interpretation was consistent with the purpose of the statute and other states' implementation of similar statutes, the court determined that debtor's workers' compensation claims were beyond the reach of creditors

in bankruptcy. In re Fullwood, 446 B.R. 634 (Bankr. S.D. Ga. 2010).

Part 2

Hearing and Appeals

34-9-100. Filing of claims with board; investigation or mediation; hearing; dismissal of stale claims.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

JUDICIAL DECISIONS

Cited in Burns v. State Dep't of Admin. Servs., 331 Ga. App. 11, 769 S.E.2d 733 (2015).

34-9-102. Hearing before administrative law judge.

(a) **Notice of hearing.** The hearing shall be held as soon as practicable; provided, however, no hearing shall be scheduled less than 30 days nor more than 90 days from the date of the hearing notice. With regard to any request for a determination of noncatastrophic status in accordance with subparagraph (g)(6)(B) of Code Section 34-9-200.1, no hearing shall be scheduled less than 90 days after the hearing is requested.

(b) **Place of hearing.** If the injury or death occurred within this state, the hearing shall be held in the county where the injury or death occurred or in any contiguous county or in any county within 50 miles of the county of injury or death, unless otherwise agreed by the parties and authorized by the administrative law judge. If the injury or death occurred outside the state, the hearing may be held in the county of the employer's residence or place of business or in any other county of the state, as determined in the discretion of the administrative law judge.

(c) **Authority of administrative law judge.** The administrative law judge conducting the hearing shall have, in addition to all powers necessary to implement this chapter, the following powers: to administer oaths and affirmations, to issue subpoenas, to rule upon offers of proof, to regulate the course of the hearing, to set the time and place for continued hearings, to fix the time for filing briefs, to dispose of motions to dismiss for lack of board jurisdiction, to rule on requests for continuance, to add or delete parties with or without motion, to issue interlocutory orders, to rule upon or dispose of all other motions, to appoint conservators under Code Section 34-9-226, to reprimand or

exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the administrative law judge, and to require any party to provide the board with the name of its legal representative, if any, within 21 days from the date of the hearing notice.

(d) **Discovery procedures.**

(1) Discovery procedures shall be governed and controlled by Chapter 11 of Title 9, the "Georgia Civil Practice Act."

(2) The term "administrative law judge" shall be substituted for the word "court" when construing any procedural rule, provided that any administrative law judge shall seek enforcement of orders as stated in subsection (h) of this Code section.

(3) The administrative law judge may admit as evidence at the hearing and at all future hearings evidence obtained by depositions, interrogatories, or admissions of fact, whether or not the deponent is available to testify in person at the hearing and whether or not the evidence was taken originally for the purpose of discovery or evidence, or both.

(e) **Conduct of hearing.**

(1) The administrative law judge shall conduct the hearing in an informal manner consistent with the requirements of due process of law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. The rules of evidence pertaining to the trial of civil nonjury cases in the superior courts of Georgia shall be followed unless otherwise provided in this chapter. A party may conduct such cross-examination as required for a full and true disclosure of the facts. Official notice may be taken of judicially cognizable facts, provided the parties are provided an opportunity to contest the material noticed.

(2) Any medical report or document signed and dated by an examining or treating physician or other duly qualified medical practitioner shall be admissible in evidence insofar as it purports to represent the history, examination, diagnosis, treatment, prognosis, or opinion relevant to any medical issue by the person signing the report, as if that person were present at the hearing and testifying as a witness, subject to the right of any party to object to the admissibility of any portion of the report and subject to the right of an adverse party to cross-examine the person signing the report and provide rebuttal testimony within the time allowed by the administrative law judge. The party tendering the medical report may, within the time allowed by the administrative law judge, also introduce the testimony of the person who has signed the medical report for the

purpose of supplementing the report. It is the express intent of the General Assembly that the provisions of this paragraph be applied retroactively as well as prospectively.

(3) For the purposes of Code Section 34-9-104, a report on a form prescribed by the board or in a narrative form which substantially complies with the form prescribed by the board and which is signed and dated by a prospective employer shall be admissible in evidence in lieu of the oral testimony of such prospective employer insofar as it documents that the employee has applied for a position or positions suitable to the employee's limitations or restrictions resulting from the work related injury and was not hired. Any party shall have the right to object to the admissibility of any portion of the report and an adverse party shall have the right to cross-examine the person signing the report and provide rebuttal testimony within the time allowed by the administrative law judge. The party tendering the report may, with the time allowed by the administrative law judge, also introduce the oral testimony of the person who has signed the report for the purpose of supplementing the report.

(4) A written laboratory test result report under Code Section 34-9-415 shall be admissible in evidence if accompanied by an affidavit from the laboratory confirming authenticity.

(5) Code Section 24-8-826 shall not apply to workers' compensation claims filed under this chapter.

(f) **Decision of the administrative law judge.** Within 30 days following the completion of evidence, unless the time for filing the decision is extended by the board, the administrative law judge shall determine the questions and issues and file the decision with the record of the hearing. At the time of the filing, a copy of the decision shall be sent to all parties and counsel of record at their addresses of record. Notice to counsel of record of a party shall constitute service of notice to the party, if a copy of the decision was sent to the address of record of said party. The decision of the administrative law judge shall be made in the form of a compensation award, appropriately titled to show its purpose and containing a concise report of the case, with findings of fact and conclusions of law and any other necessary explanation of the action taken. The administrative law judge may reconsider the official decision prior to its becoming final to correct apparent errors or omissions. The compensation award shall be final 20 days after issuance of notice of the award unless an appeal is filed in accordance with Code Section 34-9-103.

(g) **Record of hearing.** The hearing shall be reported by a designated reporter for the board, but the record of the hearing need not be transcribed unless timely application has been made to the board for an

appeal from the decision of the administrative law judge. At any time, however, a party shall have a right to obtain a transcript of the record, upon payment to the reporter of the expense of transcription.

(h) **Enforcement of orders of administrative law judge.** In proceedings before the administrative law judge or the board, if any party or an agent or employee of a party disobeys or resists any lawful order or process; or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or, after taking the oath or affirmation, refuses to testify, the administrative law judge or the board shall have the same rights and powers given the court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person not a party refuses as aforesaid, the administrative law judge or the board may certify the facts to the superior court of the county where the offense is committed for appropriate action or may impose the sanctions provided in Code Section 34-9-60.

(i) **Address of record.** Each employer and claimant shall maintain an up-to-date address with the board. Any notice required by this chapter shall be satisfied by the mailing of the notice to the address of record; provided, however, that mailing to an obsolete address, if not properly forwarded, shall not prejudice a claimant if it is established to the satisfaction of the administrative law judge or the board that at the time of the mailing the employer knew or should have known of a subsequent and proper address for the claimant.

(j) **Notice to nonresident party.**

(1) Any party subject to this chapter who is or who becomes a nonresident of this state at the time of or after the injury or death of an employee shall be deemed to have appointed irrevocably the executive director of the board as that party's agent for service of notice or any other process in any proceeding under this chapter.

(2) Any notice or process served on the executive director shall have the same legal effect as if served upon the nonresident party personally within the state.

(3) The executive director or his or her designated agent shall immediately mail a copy of the notice or process to the last known address of the nonresident party. (Ga. L. 1920, p. 167, § 57; Code 1933, § 114-707; Ga. L. 1975, p. 198, § 9; Ga. L. 1978, p. 2220, § 12; Ga. L. 1988, p. 1679, § 18; Ga. L. 1992, p. 6, § 34; Ga. L. 1992, p. 1942, § 10; Ga. L. 1994, p. 887, § 7; Ga. L. 1995, p. 642, § 8; Ga. L. 1997, p. 1367, § 3; Ga. L. 1998, p. 1508, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 364, § 1; Ga. L. 2005, p. 1210, § 4/HB 327; Ga. L. 2009, p. 118, § 1/HB 330; Ga. L. 2011, p. 99, § 48/HB 24; Ga. L. 2011, p. 551, § 3/SB 134.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-8-826" for "Code Section 24-3-18" at the beginning of paragraph (e)(5). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

34-9-103. Appeal of decision; remand; reconsideration, amendment, or revision of award.

(a) Any party dissatisfied with a decision of an administrative law judge of the trial division of the State Board of Workers' Compensation may appeal that decision to the appellate division of the State Board of Workers' Compensation which shall have original appellate jurisdiction in all workers' compensation cases. An application for review shall be made to the appellate division within 20 days of issuance of notice of the award. The appellee may institute cross appeal by filing notice thereof within 30 days of the notice of the award. If a timely application for review, cross appeal, or both, is made to the appellate division, the appellate division shall review the evidence and shall then make an award with findings of fact and conclusions of law. A copy of the award so made on review shall immediately be sent to the parties and counsel of record at dispute at their addresses of record. Notice to counsel of record of a party shall constitute service of notice to the party, if a copy of the award was sent to the address of record of said party. Upon review, the appellate division may remand to an administrative law judge in the trial division any case before it for the purpose of reconsideration and correction of apparent errors and omissions and issuance of a new award, with or without the taking of additional evidence, or for the purpose of taking additional evidence for consideration by the appellate division in rendering any decision or award in the case. The findings of fact made by the administrative law judge in the trial division shall be accepted by the appellate division where such findings are supported by a preponderance of competent and credible evidence contained within the records.

(b) Within the time limit provided by subsection (a) of this Code section for review by the board of an award made in accordance with Code Section 34-9-102 or within the time limit provided by Code Section 34-9-105 for appeal to a superior court, upon or without the suggestion of a party to the proceedings and notwithstanding the filing of an application for review or appeal, the board or any of its members or administrative law judges issuing an award shall have authority to reconsider, amend, or revise the award to correct apparent errors and omissions. Should an amended or revised award be issued, the time period for filing an application for review of the amended or revised

award under subsection (a) of this Code section or for filing appeal to a superior court under Code Section 34-9-105 shall commence upon the date of issuance of the amended or revised award. (Ga. L. 1920, p. 167, § 58; Ga. L. 1925, p. 282, § 5; Code 1933, § 114-708; Ga. L. 1963, p. 141, § 14; Ga. L. 1975, p. 198, § 10; Ga. L. 1987, p. 806, § 2; Ga. L. 1988, p. 1679, § 19; Ga. L. 1994, p. 887, § 8; Ga. L. 1999, p. 817, § 1; Ga. L. 2009, p. 118, § 2/HB 330.)

The 2009 amendment, effective July 1, 2009, in subsection (a), inserted "issuance of" near the end of the second sentence, in the fifth sentence, inserted "and counsel of record" and added "at their addresses of record", and added the sixth sentence.

Law reviews. — For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009).

JUDICIAL DECISIONS

Analysis

General Consideration

Board's authority broad. — Superior court did not err in affirming the holding of the Appellate Division of the State Board of Workers' Compensation that the board was procedurally authorized to consider an employee's claim that an employer's notice to controvert was invalid under the Workers' Compensation Act, O.C.G.A. § 34-9-221, because the Act, O.C.G.A. § 34-9-103(a), authorized the Appellate Division to remand the employee's claim to the administrative law judge to consider whether the employer's notice to controvert was valid; the statutory authority given to the Appellate Division of the State Board of Workers' Compensation in § 34-9-103(a) is broad. Crossmark, Inc. v. Strickland, 310 Ga. App. 303, 713 S.E.2d 430 (2011).

Appellate division's substitution of findings.

Superior court erred in reversing the decision of the Appellate Division of the State Board of Workers' Compensation to overrule an administrative law judge's (ALJ) finding that an employee sustained a catastrophic injury under O.C.G.A. § 34-9-200.1(g) because the Appellate Division performed the appropriate review pursuant to O.C.G.A. § 34-9-103(a), and the superior court erred in finding that the Appellate Division committed legal error by improperly applying a de novo standard of review to the ALJ's findings of fact; after weighing the evidence received by the ALJ, the Appellate Division concluded that the preponderance of the competent and credible evidence did not support the ALJ's catastrophic injury finding, and thus, the Appellate Division substituted the Division's own findings for those of the ALJ, as the Division was authorized to do. Bonus Stores, Inc. v. Hensley, 309 Ga. App. 129, 710 S.E.2d 201 (2011).

Attorney fees properly awarded.

Superior court erred in ruling that the Appellate Division of the State Board of Workers' Compensation committed a legal error in the manner in which it exercised its discretion in distributing the legal fees allotted in a settlement between an employee and an employer because the contingent fee contracts provided prima facie proof that 25 percent of the offer the employer made before the employee dismissed the first attorney would be a reasonable fee for that attorney and that 25 percent of the final settlement would be a reasonable fee for the second attorney; the Appellate Division considered evidence regarding the first attorney's typical

General Consideration (Cont'd)

hourly rate, the amount of time the attorney spent pursuing the employee's claim, and the result of those efforts, as well as the amount of time the second attorney spent pursuing the employee's claim, and the result of those efforts, and because the Board was limited to distributing a total of $162,875 in fees, it was required to exercise its discretion to determine the relative value of the attorneys' services. Flores v. Keener, 302 Ga. App. 275, 690 S.E.2d 903 (2010).

Cited in Greene v. Dep't of Cmty. Health, 293 Ga. App. 201, 666 S.E.2d 590 (2008); Harris v. Eastman Youth Dev. Ctr., 315 Ga. App. 643, 727 S.E.2d 254 (2012).

Jurisdiction

Subject matter jurisdiction. — Workers' Compensation Board's Appellate Division and the superior court had subject matter jurisdiction to consider whether an employee suffered a fictional new injury because under its modified scope of review set out in O.C.G.A. § 34-9-103(a), the Appellate Division had subject matter jurisdiction to reconsider all of the administrative law judge's (ALJ) findings, and once it did so, upon a timely application, the superior court also had subject matter jurisdiction to consider the appeal; the issue before the Appellate Division was whether the ALJ properly ruled on the employee's injury date, which was an issue that arose from both the employee's argument and the employer's argument. Home Depot v. McCreary, 306 Ga. App. 805, 703 S.E.2d 392 (2010).

Findings of Fact

Support of judgment from findings. Superior court erred in reversing an award of the Appellate Division of the Georgia State Board of Workers' Compensation based upon the court's determination that an administrative law judge's findings were supported by a preponderance of the evidence because, pursuant to O.C.G.A. § 34-9-103(a), there was record evidence to support the Board's award. Master Craft Flooring v. Dunham, 308 Ga. App. 430, 708 S.E.2d 36 (2011), cert. denied, No. S11C1045, 2011 Ga. LEXIS 496 (Ga. 2011).

Correction of Apparent Errors

Board's decision based on erroneous theory. — State Board of Workers' Compensation erred in finding that an employee's accident did not arise out of employment under the Workers' Compensation Act, O.C.G.A. § 34-9-1(4), because the decision was based upon an erroneous theory regarding what conduct constituted a deviation from employment that would bar compensation under the Act; the decision contravened the humanitarian purpose of the Act, O.C.G.A. § 34-9-23, and distorted the definition of a deviation from employment to say that the employee's attempt to stop a rolling car was a purely personal mission because at the instant the employee's car began to roll, the employee was on duty. Stokes v. Coweta County Bd. of Educ., 313 Ga. App. 505, 722 S.E.2d 118 (2012), cert. denied, No. S12C0880, 2012 Ga. LEXIS 473 (Ga. 2012).

Board did not reach decision based upon erroneous legal theory. — Superior court erred in reversing the decision of the State Board of Workers' Compensation (Georgia) denying an employee's claim for temporary total disability benefits because the superior court failed to conduct an "any evidence" standard of review; the board did not reach a decision based upon an erroneous legal theory because the board concluded that the employee failed to engage in a diligent job search based upon factors that were within the employee's control. Brown Mech. Contrs., Inc. v. Maughon, 317 Ga. App. 106, 728 S.E.2d 757 (2012).

34-9-104. Modification of award or order contained in prior decision in event of change in condition.

Law reviews. — For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009). For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 66 Mercer L. Rev. 231 (2014). For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Untimely claim is barred.

WC-14 form filed in 2002 that only made a claim for a change in condition did not satisfy the requirements for a timely filing under O.C.G.A. § 34-9-104(b) of an application for catastrophic injury designation, and a WC-14 form filed in 2006 that properly sought the designation was untimely as the worker's last income benefit was received in 2001. Tara Foods v. Johnson, 297 Ga. App. 16, 676 S.E.2d 418 (2009), cert. denied, No. S09C1243, 2009 Ga. LEXIS 344 (Ga. 2009).

Driver's claim for catastrophic designation of an injury was time barred under O.C.G.A. § 34-9-104(b) because, inasmuch as the driver sought additional income benefits, the driver had two years from the date of the last income benefits payment to file the WC-R1CATEE claim form for a catastrophic injury designation, but failed to do so; the driver's earlier filing of a WC-14 form did not toll the statute of limitation because the only benefits sought in the driver's WC-14 form were temporary disability benefits. There was no request for a catastrophic injury designation in the WC-14 form. Kroger Co. v. Wilson, 301 Ga. App. 345, 687 S.E.2d 586 (2009), cert. denied, No. S10C0606, 2010 Ga. LEXIS 341 (Ga. 2010).

Notice to employee of benefit change.

When an employer failed to give proper notice to an employee of a reduction in benefits from temporary total disability to temporary partial disability, O.C.G.A. § 34-9-104(a)(1) did not require that the employee had to undergo a change in status before the employer could again seek to reduce the employee's benefits. Kaolin v. Blackshear, 306 Ga. App. 491, 702 S.E.2d 440 (2010).

Notice of a reduction in benefits that was provided by an employer to an employee was generated over five months from the last medical evaluation and over four months from the functional capacity evaluation referenced in that notice. Therefore, regardless of when that notice was articulated, it could not have been based upon any determination within the required time period. Kaolin v. Blackshear, 306 Ga. App. 491, 702 S.E.2d 440 (2010).

"Actually made" meant when last payment was mailed to the recipient.

— Employee's claim for reinstatement of income benefits was barred by the two-year statute of limitations, O.C.G.A. § 34-9-104(b), because the last payment was made more than two years before the employee filed the claim; the Workers' Compensation Board's determination that a payment was "actually made" when the payment was mailed to the recipient was reasonable and entitled to deference. Lane v. Williams Plant Servs., 330 Ga. App. 416, 766 S.E.2d 482 (2014).

Change in Condition

Award not modifiable where condition not changed.

Appellate Division of the Georgia State Board of Workers' Compensation determined that a claimant's second neck injury was not a compensable aggravation of a preexisting neck injury because the Board concluded that the claimant's neck injury had returned to the neck's pre-aggravation physical condition. Master Craft Flooring v. Dunham, 308 Ga. App. 430, 708 S.E.2d 36 (2011), cert. denied, No. S11C1045, 2011 Ga. LEXIS 496 (Ga. 2011).

Change in Condition (Cont'd)

Claimant cannot have "change in condition" under this section unless there has been a previous award, etc.

Employee was erroneously awarded workers' compensation benefits for a change in condition under O.C.G.A. § 34-9-104(a)(1) because the employee had not previously received an award of workers' compensation benefits for the employee's job-related shoulder injury. Trucks, Inc. v. Trowell, 302 Ga. App. 488, 690 S.E.2d 880 (2010).

Claimant must have previously received benefits.

A current workers' compensation insurer was responsible for a custodian's claims because the claims did not constitute a change of condition related to an August 1, 2000, incident under O.C.G.A. § 34-9-104 because the custodian only received medical benefits, not income benefits, prior to 2005 when the custodian was forced to stop working and filed a claim; thus, the claim constituted a fictional new accident. Laurens County Bd. of Educ. v. Dewberry, 296 Ga. App. 204, 674 S.E.2d 73 (2009).

Request for catastrophic injury designation was change in condition authorizing additional TTD benefits. — An employee's timely filing of a request for catastrophic designation, Form WC-R1CATEE, constituted a timely application for additional temporary total disability (TTD) income benefits under O.C.G.A. § 34-9-104(b), although the form contained no request for additional TTD benefits, because the request would entitle the employee to additional benefits pursuant to O.C.G.A. § 34-9-261. Ga. Inst. of Tech. v. Hunnicutt, 303 Ga. App. 536, 694 S.E.2d 190, cert. denied, No. S10C1299, 2010 Ga. LEXIS 721 (Ga. 2010).

Claim was time barred.

Claimant's request for reinstatement of temporary total disability (TTD) benefits based on a change in condition was time-barred under O.C.G.A. § 34-9-104(b)'s two-year limitation period because the fact that the employer failed to serve the claimant with various forms, in violation of O.C.G.A. 34-9-221(c), was not grounds for extending the statute of limitations. The issue was whether the claimant brought the claim within two years of the last TTD payment, not whether the employer properly notified the claimant that such benefits had been terminated. United Grocery Outlet v. Bennett, 292 Ga. App. 363, 665 S.E.2d 27 (2008), cert. denied, 2008 Ga. LEXIS 939 (Ga. 2008).

Appellate Division of the State Board of Workers' Compensation properly denied an employee's request for catastrophic injury payments under O.C.G.A. § 34-9-261 because the employee did not experience a "change in condition" within the limitations period under O.C.G.A. § 34-9-104(b) for purposes of additional disability income benefits. Williams v. Conagra Poultry of Athens, Inc., 295 Ga. App. 744, 673 S.E.2d 105 (2009), cert. denied, No. S09C0832, 2009 Ga. LEXIS 337 (Ga. 2009).

Administrative law judge erred in finding that an employee suffered a fictional new injury when the employee ceased working for an employer and that the employee's claim was not barred by the statute of limitation, O.C.G.A. § 34-9-104(b), because the progressive aggravation of the employee's injuries, which was caused by the performance of the employee's work duties and ultimately resulted in the employee's inability to work, could only be characterized as a change in condition under O.C.G.A. § 34-9-104(a); the employee sustained the initial injury while working for the employer, was awarded workers' compensation benefits, and after ten months, resumed employment for the next 12 years. Shaw Indus. v. Scott, 310 Ga. App. 750, 713 S.E.2d 917 (2011), aff'd, 291 Ga. 313, 729 S.E.2d 327 (2012).

Lower court properly held that an ALJ erred as a matter of law in awarding an employee workers' compensation benefits when an employee's worsening knee and gait problems constituted a change of condition as a result of a prior foot injury, not a fictional new injury, and as a result, the employee's claim was time-barred under O.C.G.A. § 34-9-104(b). Scott v. Shaw Indus., 291 Ga. 313, 729 S.E.2d 327 (2012).

Employee was not entitled to workers' compensation for knee surgery based on the two-year statute of limitation in O.C.G.A. § 34-9-104(b) because the employee had last received benefits for the employee's right knee injury over two years before the employee's claim, and the need for surgery was a change in condition for the worse and not a fictional new injury. ABF Freight Sys. v. Presley, 330 Ga. App. 885, 769 S.E.2d 611 (2015).

Change in condition and new accident distinguished.

Claimant was properly awarded workers' compensation benefits because there was at least a scintilla of evidence to support a finding that the claimant suffered a new injury because the claimant's pre-existing condition was independently aggravated by work that was not normal and that the claimant had not suffered a change in condition. Evergreen Packaging, Inc. v. Prather, 318 Ga. App. 440, 734 S.E.2d 209 (2012).

Evidence supported determination, etc.

Employee's status, i.e., the employee's legal condition vis-a-vis the employee's employer, was first established when the employer began paying benefits voluntarily and last established when the last benefit payment was made in 2002; therefore, the employee's application for penalties for late benefits payments under O.C.G.A. § 34-9-221 made in 2010, eight years later, was governed by the change in condition statute of limitations, O.C.G.A. § 34-9-104(b), rather than the general statute of limitations, O.C.G.A. § 34-9-82. Metro. Atlanta Rapid Transit Auth. v. Reid, 295 Ga. 863, 763 S.E.2d 695 (2014).

34-9-105. When award deemed final; appeal to superior court; grounds for setting aside decisions; appeal to Court of Appeals.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010). For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

JUDICIAL DECISIONS

Analysis

General Consideration

Nowhere in the workers' compensation law is there provision for an interlocutory appeal, etc.

When the Appellate Division of the Board of Workers' Compensation vacated an administrative law judge's decision and remanded the case to the trial division for additional proceedings, including a hearing if needed, the superior court lacked jurisdiction to hear the employer's interlocutory appeal, which was not authorized under the Workers' Compensation Act. The order remanding the case was not a final award, order, judgment or decision. Strickland v. Crossmark, Inc., 298 Ga. App. 568, 680 S.E.2d 606 (2009).

Court should have remanded instead of striking finding. — Trial court properly held that the issue of the compensability of a workers' compensation claimant's injuries was not before an administrative law judge (ALJ), as nothing suggested that the parties or the ALJ believed this was an issue. The trial court lacked the authority, however, to strike the factual finding as to compensability; rather, as the evidence at the hearing did raise the issue of whether the back injury was compensable, the trial court should

General Consideration (Cont'd)

have remanded the case to the State Board of Workers' Compensation for further hearing. Home Depot v. Pettigrew, 298 Ga. App. 501, 680 S.E.2d 450 (2009).

Judgment to be based on record as transmitted.

Trial court erred by setting aside an award of temporary total disability benefits made to a claimant by the State Board of Workers' Compensation because the court did not have before it the transcript of the relevant evidentiary hearing when the judge ruled to set aside the award, and the court incorrectly held that the claimant had to demonstrate certain facts not required by the law. Burns v. State Dep't of Admin. Servs., 331 Ga. App. 11, 769 S.E.2d 733 (2015).

Court affirmed compensation based on psychological injuries. — Because there was evidence that the psychological problems encountered by an employee constituted a real fear of death from further asthma attacks and concern for the special needs children that the employee transported, the superior court did not err in affirming an award of workers' compensation benefits under O.C.G.A. § 34-9-105(c)(5). DeKalb County Bd. of Educ. v. Singleton, 294 Ga. App. 96, 668 S.E.2d 767 (2008).

Cited in Flores v. Keener, 302 Ga. App. 275, 690 S.E.2d 903 (2010); Stokes v. Coweta County Bd. of Educ., 313 Ga. App. 505, 722 S.E.2d 118 (2012).

Conclusive Effect of Findings or Award

Findings of fact are conclusive if supported by any evidence.

While using a heating pad on a sore hip that had been injured in a work-related accident, a worker fell asleep and sustained third-degree burns to the hip. The Georgia State Board of Workers' Compensation properly ruled that the burn was not a compensable superadded injury as there was some evidence to support the Board's findings that the heating pad, which had not been prescribed by a physician, was not reasonable and necessary treatment under O.C.G.A. § 34-9-200(a), and that the burn was not a natural consequence of the hip injury. City of Atlanta v. Roach, 297 Ga. App. 408, 677 S.E.2d 426 (2009).

Affirmation of award required where evidence exists.

Because the finding of the Appellate Division of the State Board of Workers' Compensation that an employee's injuries were not catastrophic was supported by some evidence, the superior court erred in weighing the evidence and in substituting the court's judgment for that of the Appellate Division; the findings of an orthopedist who evaluated the employee and other doctors, together with a spine specialist's written assessment and testimony, provided evidence that at least by the time of the Appellate Division's judgment, the employee's back injury was not of a nature and severity that the injury prevented the employee from being able to perform any work available in substantial numbers within the national economy for which the employee was otherwise qualified. Bonus Stores, Inc. v. Hensley, 309 Ga. App. 129, 710 S.E.2d 201 (2011).

34-9-106. Entry and execution of judgment on settlement agreement, final order or decision, or award; modification and revocation of orders and decrees.

(a) Any party in interest in a matter involving an injury may file in the superior court of the county in which the injury occurred or, if the injury occurred outside this state or if the matter does not involve an injury, in the county in which the original hearing was had, a certified copy of:

(1) A settlement agreement approved by the board;

(2) A final order or decision of the board;

(3) An unappealed award of the board;

(4) An award of the board affirmed upon appeal; or

(5) Any final order or decision regarding the Self-insurers Guaranty Trust Fund,

whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by such court; provided, however, that where the payment of compensation is insured or provided for in accordance with this chapter, no such judgment shall be entered nor execution thereon issued except upon application to the court and for good cause shown.

(b) Upon presentation to the court of the certified copy of a decision of the board ending, diminishing, or increasing a weekly payment under the provisions of this chapter, particularly of Code Section 34-9-104, the court shall revoke or modify the order or decree to conform to such decision of the board. (Ga. L. 1920, p. 167, § 60; Code 1933, § 114-711; Ga. L. 1998, p. 128, § 34; Ga. L. 2010, p. 126, § 2/HB 1101.)

The 2010 amendment, effective July 1, 2010, added the subsection designations; in the first sentence of subsection (a), inserted "in a matter involving an injury", inserted "or if the matter does not involve an injury" in the middle, substituted a colon for "a settlement agreement approved by the board or of a final order or decision of the members or of an award of the members unappealed from or of an award of the members affirmed upon appeal," near the end, and added paragraphs (a)(1) through (a)(5).

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

JUDICIAL DECISIONS

Analysis

General Consideration
Application

General Consideration

Cited in City of Atlanta v. Holder, 309 Ga. App. 811, 711 S.E.2d 332 (2011).

Application

Revival of dormant judgment. — In an action wherein a workers' compensation claimant revived a lump-sum judgment of $37,747.08 plus accrued interest, which had become dormant against an employer, the trial court properly refused to amend the 2006 judgment that revived it to provide for weekly disability payments as the term of court ended and, therefore, the trial court had no authority to amend or alter that 2006 judgment. However, the trial court should have issued a writ of execution for the payments that became due after July 27, 2000, as

Application (Cont'd)

those payments had not become dormant.
Taylor v. Peachbelt Props., 293 Ga. App. 335, 667 S.E.2d 117 (2008).

34-9-108. Approval of attorney's fees by board; assessment of fees against the offending party; restrictions on attorney advertisement and division of fees; payment of fees or expenses.

(a) The fee of an attorney for service to a claimant in an amount of more than $100.00 shall be subject to the approval of the board, and no attorney shall be entitled to collect any fee or gratuity in excess of $100.00 without the approval of the board. The board shall approve no fee of an attorney for services to a claimant in excess of 25 percent of the claimant's award of weekly benefits or settlement.

(b)(1) Upon a determination that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the administrative law judge or the board may assess the adverse attorney's fee against the offending party.

(2) If any provision of Code Section 34-9-221, without reasonable grounds, is not complied with and a claimant engages the services of an attorney to enforce his or her rights under that Code section and the claimant prevails, the reasonable quantum meruit fee of the attorney, as determined by the board, and the costs of the proceedings may be assessed against the employer.

(3) Any assessment of attorney's fees made under this subsection shall be in addition to the compensation ordered.

(4) Upon a determination that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the administrative law judge or the board may, in addition to reasonable attorney's fees, award to the adverse party in whole or in part reasonable litigation expenses against the offending party. Reasonable litigation expenses under this subsection are limited to witness fees and mileage pursuant to Code Section 24-13-25; reasonable expert witness fees subject to the fee schedule; reasonable deposition transcript costs; and the cost of the hearing transcript.

(c) An attorney shall not advertise to render services to a potential claimant when he or she or his or her firm does not intend to render said services and shall not divide a fee for legal services with another attorney who is not a partner in or associate of his or her law firm or law office, unless:

(1) The client consents to employment of the other attorney after a full disclosure that a fee division will be made;

(2) The division is made in proportion to the services performed and the responsibility assumed by each; and

(3) The total fee of the attorneys does not clearly exceed reasonable compensation for all legal services such attorneys rendered to the client.

(d) When attorney's fees or reasonable litigation expenses are awarded under this Code section, the administrative law judge or the board shall have the authority to order payment of such fees or expenses on terms acceptable to the parties or within the discretion of the board. (Ga. L. 1920, p. 167, § 61; Code 1933, § 114-712; Ga. L. 1937, p. 528; Ga. L. 1978, p. 2220, § 14; Ga. L. 1981, p. 805, § 1; Ga. L. 1984, p. 22, § 34; Ga. L. 1988, p. 13, § 34; Ga. L. 1992, p. 1942, § 12; Ga. L. 2001, p. 748, § 2; Ga. L. 2011, p. 99, § 49/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-13-25" for "Code Section 24-10-24" in the middle of the last sentence of paragraph (b)(4). See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011). For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

JUDICIAL DECISIONS

Analysis

General Consideration

Board's decision properly set aside. — Given the State Board of Workers' Compensation's finding that the employee was entitled to attorney fees pursuant to statute, and given the strong presumption in favor of the contract fee in the Board's own rules, the trial court did not err in setting aside the decision of the Board and remanding the case to the Board for entry of a corrected award. Heritage Healthcare v. Ayers, 323 Ga. App. 172, 746 S.E.2d 744 (2013).

Finding of waiver erroneous. — Finding that the employee waived the issue of attorney fees in a workers' compensation action was erroneous because the employee pled the claim and counsel argued the claim for attorney fees; thus, the employee's conduct as reflected by the record failed to support the finding the employee waived the claim under O.C.G.A. §§ 34-9-108(b)(2) and 34-9-126(b). Cho v. Mt. Sweet Water, Inc., 322 Ga. App. 400, 745 S.E.2d 663 (2013).

Cited in S&B Eng'rs & Constructors Ltd. v. Bolden, 304 Ga. App. 534, 697 S.E.2d 260 (2010).

Evidence

Specific findings of fact.

Because the Appellate Division failed to make any substituted findings of fact, it was impossible to determine whether any

Evidence (Cont'd)

evidence supported its conclusion that an administrative law judge had no discretion under O.C.G.A. § 34-9-108(b)(2) to assess attorney fees for a violation of O.C.G.A. § 34-9-221. J & D Trucking v. Martin, 310 Ga. App. 247, 712 S.E.2d 863 (2011).

Reasonable Grounds

Noncompliance with § 34-9-221 must have been without "reasonable grounds."

Appellate Division of the State Board of Workers' Compensation did not err in assessing attorney fees against an employer under the Workers' Compensation Act, O.C.G.A. § 34-9-108(b)(2), because the evidence supported the Appellate Division's finding that the employer's noncompliance with the Act, O.C.G.A. § 34-9-221, was without reasonable grounds; the employer failed to pay an employee any income benefits for the first week the employee was not working or that the income benefits the employer did pay were short $100 per week, and the employer did not offer any explanation for the employer's noncompliance with O.C.G.A. § 34-9-221. Crossmark, Inc. v. Strickland, 310 Ga. App. 303, 713 S.E.2d 430 (2011).

Employee entitled to attorney's fees. — Because some evidence, including a doctor's initial finding that both of the employee's wrists were injured on the job, supported the administrative law judge's determination that the employer's defense was unreasonable, the superior court erred in reversing the award of attorney fees by the State Board of Workers' Compensation. Waters v. PCC Airfoils, LLC, 328 Ga. App. 557, 760 S.E.2d 5 (2014).

Attorney's fees properly awarded.

There was some evidence to support the assessment of attorney fees against an employer because the Workers' Compensation Act, O.C.G.A. § 34-9-108(b)(1) provided for an award of attorney fees if the proceeding was defended in part, without reasonable grounds, and the medical evidence was uncontroverted as to an employee's need for attendant care at least seven days a week, eight hours a day; however, the superior court erred in reversing the Appellate Division of the Workers' Compensation Board as to the amount of its attorney fees award because the appellate division based its fee award on the record and indicated that its decision went beyond the attorney's valuation opinion, but included testimony and documentation that showed various actions taken by the attorney, the nature and circumstances of which the appellate division was entitled to assess. Medical Office Mgmt. v. Hardee, 303 Ga. App. 60, 693 S.E.2d 103 (2010).

Reversal of board's award of fees not authorized.

Superior court erred in ruling that the Appellate Division of the State Board of Workers' Compensation committed a legal error in the manner in which it exercised its discretion in distributing the legal fees allotted in a settlement between an employee and an employer because the contingent fee contracts provided prima facie proof that 25 percent of the offer the employer made before the employee dismissed the first attorney would be a reasonable fee for that attorney and that 25 percent of the final settlement would be a reasonable fee for the second attorney; the Appellate Division considered evidence regarding the first attorney's typical hourly rate, the amount of time the attorney spent pursuing the employee's claim, and the result of those efforts, as well as the amount of time the second attorney spent pursuing the employee's claim, and the result of those efforts, and because the Board was limited to distributing a total of $ 162,875 in fees, it was required to exercise its discretion to determine the relative value of the attorneys' services. Flores v. Keener, 302 Ga. App. 275, 690 S.E.2d 903 (2010).

ADVISORY OPINIONS OF THE STATE BAR

Increase in attorney fees. — In workers' compensation cases in which the employee-claimant's attorney seeks to increase the attorney's fee by appealing the

Workers' Compensation Board's fee determination to the Superior Court, the lawyer is involved in a conflict of interest if the lawyer does not give the client a full explanation concerning their conflicting positions in the appeal and advise the client of the client's right to obtain independent legal counsel to protect the client's interests during this stage of litigation. Adv. Op. No. 81-29 (November 20, 1981).

ARTICLE 4

INSURANCE OF COMPENSATION LIABILITY GENERALLY

34-9-121. Duty of employer to insure in licensed company or association or to deposit security, indemnity, or bond as self-insurer; application to out-of-state employers; membership in mutual insurance company.

(a) Unless otherwise ordered or permitted by the board, every employer subject to the provisions of this chapter relative to the payment of compensation shall secure and maintain full insurance against such employer's liability for payment of compensation under this article, such insurance to be secured from some corporation, association, or organization licensed by law to transact the business of workers' compensation insurance in this state or from some mutual insurance association formed by a group of employers so licensed; or such employer shall furnish the board with satisfactory proof of such employer's financial ability to pay the compensation directly in the amount and manner and when due, as provided for in this chapter. In the latter case, the board may, in its discretion, require the deposit of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred; provided, however, that it shall be satisfactory proof of the employer's financial ability to pay the compensation directly in the amount and manner when due, as provided for in this chapter, and the equivalent of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred, if the employer shall show the board that such employer is a member of a mutual insurance company duly licensed to do business in this state by the Commissioner of Insurance, as provided by the laws of this state, or of an association or group of employers so licensed and as such is exchanging contracts of insurance with the employers of this and other states through a medium specified and located in their agreements with each other, but this proviso shall in no way restrict or qualify the right of self-insurance as authorized in this Code section. Nothing in this Code section shall be construed to require an employer to place such employer's entire insurance in a single insurance carrier.

(b)(1) Any employer from another state engaged in the construction industry within this state with a workers' compensation insurance

policy issued under the laws of such other state so as to cover that employer's employees while in this state shall be in compliance with subsection (a) of this Code section if:

(A) Such other state recognizes the extraterritorial provisions of Code Section 34-9-242; and

(B) Such other state recognizes and gives effect within such state to workers' compensation policies issued to employers of this state.

(2) Nothing in this subsection shall be construed to void any insurance coverage.

(c) The board shall have the authority to promulgate rules and regulations to set forth requirements for third-party administrators and servicing agents, including insurers acting as third-party administrators or servicing agents, with regard to their management or administration of workers' compensation claims. All Title 33 regulations shall remain in the Insurance Department.

(d) Wherever a self-insurer has been required to post bond, should it cease to be a corporation, obtain other coverage, or no longer desire to be a self-insurer, the board shall be allowed to return the bond in either instance, upon the filing of a certificate certifying to the existence of an insurance contract to take over outstanding liability resulting from any presently pending claim or any future unrepresented claims; and the board shall be relieved of any liability arising out of a case where the injuries were incurred, or liability therefor, prior to the returning of the bonds. (Ga. L. 1920, p. 167, § 66; Code 1933, § 114-602; Ga. L. 1962, p. 528, § 1; Ga. L. 1963, p. 141, § 13; Ga. L. 1972, p. 929, § 4; Ga. L. 1989, p. 14, § 34; Ga. L. 1997, p. 1367, § 5; Ga. L. 2009, p. 118, § 3/HB 330.)

The 2009 amendment, effective July 1, 2009, added subsection (b) and redesignated former subsections (b) and (c) as present subsections (c) and (d), respectively.

Law reviews. — For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009).

34-9-126. Filing by employer of evidence of compliance with insurance requirements; assessment of attorney's fees and increased compensation against employer who fails to file.

JUDICIAL DECISIONS

Analysis

Attorney's Fees

Attorney's Fees

Finding of waiver of attorney's fees erroneous. — Finding that the employee waived the issue of attorney fees in a workers' compensation action was erroneous because the employee pled the claim and counsel argued the claim for attorney fees; thus, the employee's conduct as reflected by the record failed to support the finding the employee waived the claim under O.C.G.A. §§ 34-9-108(b)(2) and 34-9-126(b). Cho v. Mt. Sweet Water, Inc., 322 Ga. App. 400, 745 S.E.2d 663 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 34-9-126 are offenses for which those charged are to be fingerprinted. 2011 Op. Att'y Gen. No. 2011-1.

34-9-127. Issuance by board of certificate of self-insurance; review; revocation.

(a) Whenever an employer has complied with those provisions of Code Section 34-9-121 relating to self-insurance, the board shall issue to such employer a certificate which shall remain in force for a period fixed by the board.

(b) The board shall have the authority to review the self-insured status of an employer after a merger or acquisition involving the employer.

(c) The board may, upon at least 30 days' notice to the employer, and proof of receipt of same, and after a hearing, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation, the board may grant a new certificate to the employer upon the employer's petition. (Ga. L. 1920, p. 167, § 68; Code 1933, § 114-604; Ga. L. 1999, p. 817, § 2; Ga. L. 2010, p. 126, § 3/HB 1101.)

The 2010 amendment, effective July 1, 2010, in subsection (c), in the first sentence, substituted "30 days'" for "60 days'" and inserted ", and proof of receipt of same,", and substituted "the employer's" for "his" near the end of the second sentence.

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

34-9-129. Furnishing of bond by insurance companies doing workers' compensation business in state; bringing of actions upon bond; posting of security in lieu of bond.

Every insurance company doing a workers' compensation business in this state shall furnish a bond payable to the state in the sum of $50,000.00 with some surety company authorized to transact business in this state as surety, in such form as may be approved by the Commissioner of Insurance, conditioned for the payment of compensation losses on policies issued by such insurance company upon risks

located in this state. An action may be brought upon said bond by the board for the use and benefit of any party or parties at interest. The annual license of such company shall not be issued or renewed until it has filed with the Commissioner of Insurance of this state the bond required by this Code section. In lieu of such bond a deposit of the same amount may be made with the Office of the State Treasurer in the form of other security satisfactory to the Commissioner of Insurance. (Ga. L. 1920, p. 167, § 70; Ga. L. 1933, p. 182, § 1; Code 1933, § 114-606; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in the middle of the last sentence of this Code section.

34-9-135. Disclosure of costs by insurer.

Reserved. Repealed by Ga. L. 2009, p. 42, § 1/SB 76, effective July 1, 2009.

Editor's notes. — This Code section was based on Code 1981, § 34-9-135, enacted by Ga. L. 1992, p. 1942, § 14.

ARTICLE 5

GROUP SELF-INSURANCE FUNDS

34-9-168. Grounds and procedure for restraining transaction of business by fund or administrator; appointment of receivers; criminal prosecution.

JUDICIAL DECISIONS

Claims in common with the insolvent trust fund versus personal claims. — Trial court erred in dismissing the plaintiffs' breach of contract, misrepresentation, and other claims against a workers compensation trust fund because while the court properly concluded that the Georgia Insurance Commissioner, as an appointed receiver, had the exclusive authority to prosecute legal claims that were common to the insolvent trust fund, the court erred in finding that the plaintiffs did not have standing to prosecute claims that were personal in nature and not common to the trust fund. Superior Roofing Co. of Ga., Inc. v. Am. Prof'l Risk Servs., 323 Ga. App. 416, 744 S.E.2d 400 (2013).

34-9-173. Remedy of deficiencies in surplus or reserve; initiation of insolvency proceedings; assessments upon liquidation.

JUDICIAL DECISIONS

Claims in common with the insolvent trust fund versus personal claims. — Trial court erred in dismissing the plaintiffs' breach of contract, misrepresentation, and other claims against a workers compensation trust fund because while the court properly concluded that the Georgia Insurance Commissioner, as an appointed receiver, had the exclusive authority to prosecute legal claims that were common to the insolvent trust fund, the court erred in finding that the plaintiffs did not have standing to prosecute claims that were personal in nature and not common to the trust fund. Superior Roofing Co. of Ga., Inc. v. Am. Prof'l Risk Servs., 323 Ga. App. 416, 744 S.E.2d 400 (2013).

ARTICLE 6

PAYMENT OF COMPENSATION

PART 1

MEDICAL ATTENTION

34-9-200. Compensation for medical care, artificial members, and other treatment and supplies; effect of employee's refusal of treatment; employer's liability for temporary care.

(a)(1) For all injuries occurring on or before June 30, 2013, and for injuries occurring on or after July 1, 2013, designated as catastrophic injuries pursuant to subsection (g) of Code Section 34-9-200.1, the employer shall furnish the employee entitled to benefits under this chapter such medical, surgical, and hospital care and other treatment, items, and services which are prescribed by a licensed physician, including medical and surgical supplies, artificial members, and prosthetic devices and aids damaged or destroyed in a compensable accident, which in the judgment of the State Board of Workers' Compensation shall be reasonably required and appear likely to effect a cure, give relief, or restore the employee to suitable employment.

(2) For all injuries occurring on or after July 1, 2013, that are not designated as catastrophic injuries pursuant to subsection (g) of Code Section 34-9-200.1, the employer shall, for a maximum period of 400 weeks from the date of injury, furnish the employee entitled to benefits under this chapter such medical, surgical, and hospital care and other treatment, items, and services which are prescribed by a licensed physician, including medical and surgical supplies, artificial

members, and prosthetic devices and aids damaged or destroyed in a compensable accident, which in the judgment of the State Board of Workers' Compensation shall be reasonably required and appear likely to effect a cure, give relief, or restore the employee to suitable employment.

(b) Upon the request of an employee or an employer, or upon its own motion, the board may in its judgment, after notice is given in writing of the request to all interested parties and allowing any interested party 15 days from the date of said notice to file in writing its objections to the request, order a change of physician or treatment and designate other treatment or another physician; and, in such case, the expenses shall be borne by the employer upon the same terms and conditions as provided in subsection (a) of this Code section.

(c) As long as an employee is receiving compensation, he or she shall submit himself or herself to examination by the authorized treating physician at reasonable times. If the employee refuses to submit himself or herself to or in any way obstructs such an examination requested by and provided for by the employer, upon order of the board his or her right to compensation shall be suspended until such refusal or objection ceases and no compensation shall at any time be payable for the period of suspension unless in the opinion of the board the circumstances justify the refusal or obstruction.

(d) If an emergency arises and the employer fails to provide the medical or other care as specified in this Code section, or if other compelling reasons force the employee to seek temporary care, the employee is authorized to seek such temporary care as may be necessary. The employer shall pay the reasonable costs of the temporary care if ordered by the board. (Ga. L. 1920, p. 167, § 26; Code 1933, § 114-501; Ga. L. 1937, p. 528; Ga. L. 1949, p. 1357, § 4; Ga. L. 1955, p. 210, § 5; Ga. L. 1963, p. 141, § 12; Ga. L. 1968, p. 3, § 4; Ga. L. 1971, p. 895, § 2; Ga. L. 1975, p. 190, § 7; Ga. L. 1985, p. 727, § 3; Ga. L. 1990, p. 1409, § 4; Ga. L. 1994, p. 887, § 10; Ga. L. 2003, p. 364, § 2; Ga. L. 2013, p. 651, § 1/HB 154.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of subsection (a) as paragraph (a)(1); substituted "For all injuries occurring on or before June 30, 2013, and for injuries occurring on or after July 1, 2013, designated as catastrophic injuries pursuant to subsection (g) of Code Section 34-9-200.1, the" for "The" at the beginning of paragraph (a)(1); and added paragraph (a)(2).

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010). For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 185 (2013). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Provision of handicap-accessible housing.

Employee's prospective house was not a medical device within the meaning of O.C.G.A. § 34-9-200(a) and did not foreclose any financial interest in the employer, which would allow the award of a life estate therein, because rather than prescribing wheelchair accessible housing in a medical sense, a licensed physician as a member of the employee's rehabilitation team, recommended that the employee be provided an "accessible house," among other things, as a rehabilitation service that would benefit the medical treatment being provided to the employee; even had a wheelchair accessible house been medically prescribed, O.C.G.A. § 34-9-200(a) could not reasonably be construed as such. S. Concrete/Watkins Associated Indus. v. Spires, No. A10A1981, 2011 Ga. App. LEXIS 243 (Mar. 22, 2011).

Medical Treatment Generally

Change of physicians or treatment.

In a workers' compensation case, an employee who worked on an automotive production line was treated by several physicians for a shoulder injury. Because the State Board of Workers' Compensation's denial of the employee's request to change the authorized treating physician was neither arbitrary nor capricious, the trial court erred by designating a new, authorized treating physician and finding that the employer should pay the medical expenses under O.C.G.A. § 34-9-200; the bills of a doctor who was not the employee's authorized treating physician could not be reimbursed. Decostar Indus. v. Juarez, 316 Ga. App. 642, 730 S.E.2d 120 (2012).

Board was required to determine if unauthorized treatment was related to work injury. — Because an employee's authorized physicians discharged the employee and released the employee to work without restrictions in April 2010, and the question of whether the employee's subsequent unauthorized medical treatment was related to the employee's work injury was not addressed below, the employee's claim was remanded for a determination of that issue. Lane v. Williams Plant Servs., 330 Ga. App. 416, 766 S.E.2d 482 (2014).

Treatment held to be unauthorized.

While using a heating pad on a sore hip that had been injured in a work-related accident, a worker fell asleep and sustained third-degree burns to the hip. The Georgia State Board of Workers' Compensation properly ruled that the burn was not a compensable superadded injury as there was some evidence to support the Board's findings that the heating pad, which had not been prescribed by a physician, was not reasonable and necessary treatment under O.C.G.A. § 34-9-200(a), and that the burn was not a natural consequence of the hip injury. City of Atlanta v. Roach, 297 Ga. App. 408, 677 S.E.2d 426 (2009).

When claimant entitled to see "any" doctor.

Because the evidence relied upon by the Appellate Division was incomplete, misstated that physical therapy was completed a year later than the therapy was, and included evidence that the employee sought treatment from a third physician after the employee's authorized physicians released the employee to work, a decision denying the employee's request for payment of unauthorized medical expenses was vacated; remand was required to determine whether the treatment was related to the employee's work injury. Lane v. Williams Plant Servs., 330 Ga. App. 416, 766 S.E.2d 482 (2014).

34-9-200.1. Rehabilitation benefits; effect of employee's refusal of treatment; rehabilitation suppliers; catastrophic injury cases.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Provision of handicap-accessible housing.

Superior court erred in reversing the decision of the Appellate Division of the State Board of Workers' Compensation because the Board properly determined that the employer was not obligated to build a wheelchair-accessible home for the employee on property that the employee owned and that the employer could meet the employer's obligations under relevant provisions of the Workers' Compensation Act and Board rules by providing the employee a life estate in a suitable home while retaining title to the property in fee simple; while the Act, O.C.G.A. § 34-9-200.1(a), and Ga. Bd. Workers' Comp. R. 200.1(a)(5)(ii) clearly provide for employer-provided housing to the catastrophically injured employee, neither explicitly requires that such housing be provided to the employee in fee simple. S. Concrete/Watkins Associated Indus. v. Spires, No. A10A1981, 2011 Ga. App. LEXIS 243 (Mar. 22, 2011).

Authority of Board. — Appellate Division of the State Board of Workers' Compensation had the authority to award a life estate to an employer because no dispute as to the title of land was foreseeable in the future, and the Board did not exercise authority reserved to the superior court alone, but rather, the Board simply exercised the Board's broad authority to craft a reasonable remedy; the Board's Rehabilitation Guidelines require that all issues of ownership and maintenance be resolved before any construction begins. S. Concrete/Watkins Associated Indus. v. Spires, No. A10A1981, 2011 Ga. App. LEXIS 243 (Mar. 22, 2011).

Catastrophic injury finding not supported.

Superior court erred in reversing the decision of the Appellate Division of the State Board of Workers' Compensation to overrule an administrative law judge's (ALJ) finding that an employee sustained a catastrophic injury under O.C.G.A. § 34-9-200.1(g) because the Appellate Division performed the appropriate review pursuant to O.C.G.A. § 34-9-103(a), and the superior court erred in finding that the Appellate Division committed legal error by improperly applying a de novo standard of review to the ALJ's findings of fact; after weighing the evidence received by the ALJ, the Appellate Division concluded that the preponderance of the competent and credible evidence did not support the ALJ's catastrophic injury finding, and thus, the Appellate Division substituted the Division's own findings for those of the ALJ, as the Division was authorized to do. Bonus Stores, Inc. v. Hensley, 309 Ga. App. 129, 710 S.E.2d 201 (2011).

Because the finding of the Appellate Division of the State Board of Workers' Compensation that an employee's injuries were not catastrophic was supported by some evidence, the superior court erred in weighing the evidence and in substituting the court's judgment for that of the Appellate Division; the findings of an orthopedist who evaluated the employee and other doctors, together with a spine specialist's written assessment and testimony, provided evidence that at least by the time of the Appellate Division's judgment, the employee's back injury was not of a nature and severity that the injury prevented the employee from being able to

perform any work available in substantial numbers within the national economy for which the employee was otherwise qualified. Bonus Stores, Inc. v. Hensley, 309 Ga. App. 129, 710 S.E.2d 201 (2011).

Superior court erred in affirming a decision to deny an employee's request to designate the injury the employee sustained while working for an employer as catastrophic pursuant to O.C.G.A. § 34-9-200.1(g)(6)(A) because the administrative law judge (ALJ) erred by making a determination as to the compensability of the employee's lower back pain when that issue was not before the ALJ; there was no evidence that the employee had notice and an opportunity to be heard on the issue of compensability or that the employee gave implied consent to trial of that issue. Harris v. Eastman Youth Dev. Ctr., 315 Ga. App. 643, 727 S.E.2d 254 (2012).

Untimely request for catastrophic injury designation. — Driver's claim for catastrophic designation of an injury was time-barred under O.C.G.A. § 34-9-104(b) because, inasmuch as the driver sought additional income benefits, the driver had two years from the date of the last income benefits payment to file the WC-R1CATEE claim form for a catastrophic injury designation, but failed to do so; the driver's earlier filing of a WC-14 form did not toll the statute of limitation because the only benefits sought in the driver's WC-14 form were temporary disability benefits. There was no request for a catastrophic injury designation in the WC-14 form. Kroger Co. v. Wilson, 301 Ga. App. 345, 687 S.E.2d 586 (2009), cert. denied, No. S10C0606, 2010 Ga. LEXIS 341 (Ga. 2010).

34-9-201. Selection of physician from panel of physicians; change of physician or treatment; liability of employer for failure to maintain panel.

(a) As used in this Code section, the term "physician" shall include any person licensed to practice a healing art and any remedial treatment and care in the State of Georgia.

(b) The employer may satisfy the requirements for furnishing medical care under Code Section 34-9-200 in one of the following manners:

(1) The employer shall maintain a list of at least six physicians or professional associations or corporations of physicians who are reasonably accessible to the employees; provided, however, that the board may grant exceptions to the required size of the panel where it is demonstrated that more than four physicians or groups of physicians are not reasonably accessible. This list shall be known as the "Panel of Physicians." At least one of the physicians shall practice the specialty of orthopedic surgery. Not more than two industrial clinics shall be included on the panel. An employee may accept the services of a physician selected by the employer from the panel or may select another physician from the panel. The physicians selected under this subsection from the panel may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require without prior authorization from the board; provided, however, that any medical practitioner providing services as arranged by a primary authorized treating physician under this subsection shall not be permitted to arrange for any additional

referrals. The employee may make one change from one physician to another on the same panel without prior authorization of the board; or

(2) A self-insured employer or the workers' compensation insurer of an employer may contract with a managed care organization certified pursuant to Code Section 34-9-208 for medical services required by this chapter to be provided to injured employees. Medical services provided under this paragraph shall be known as "Managed Care Organization Procedures." Those employees who are subject to the contract shall receive medical services in the manner prescribed in the contract. Each such contract shall comply with the certification standards provided in Code Section 34-9-208. Self-insured employers or workers' compensation insurers who contract with a managed care organization for medical services shall give notice to the employees of the eligible medical service providers and such other information regarding the contract and manner of receiving medical services as the board may prescribe.

(c) Consistent with the method elected under subsection (b) of this Code section, the employer shall post the Panel of Physicians or Managed Care Organization Procedures in prominent places upon the business premises and otherwise take all reasonable measures to ensure that employees:

(1) Understand the function of the panel or managed care organization procedures and the employee's right to select a physician therefrom in case of injury; and

(2) Are given appropriate assistance in contacting panel or managed care organization members when necessary.

(d) Notwithstanding the other provisions contained in this Code section, if an inability to make a selection of a physician as prescribed in this Code section is the result of an emergency or similarly justifiable reason, the selection requirements of this Code section shall not apply as long as such inability persists.

(e) Upon the request of an employee or an employer, or upon its own motion, the board may order a change of physician or treatment as provided under Code Section 34-9-200.

(f) If the employer fails to provide any of the procedures for selection of physicians as set forth in subsection (c) of this Code section, an employee may select any physician to render service at the expense of the employer.

(g) The board shall promulgate rules and regulations to ensure, whenever feasible, the participation of minority physicians on panels of physicians maintained by employers or in managed care organizations

pursuant to this Code section. (Code 1933, § 114-504, enacted by Ga. L. 1978, p. 2220, § 9; Ga. L. 1990, p. 1409, § 6; Ga. L. 1992, p. 1942, §§ 16, 17; Ga. L. 1994, p. 887, § 11; Ga. L. 1998, p. 1508, § 4; Ga. L. 2000, p. 1321, § 3; Ga. L. 2001, p. 748, § 3; Ga. L. 2015, p. 1079, § 2/HB 412.)

The 2015 amendment, effective July 1, 2015, in subsection (b), in paragraph (b)(1), substituted "shall practice" for "must practice" in the third sentence, and added "or" at the end, deleted former paragraph (b)(2), which read: "The employer may maintain a list of physicians in conformity with the guidelines and criteria established and contained in the Rules and Regulations of the State Board of Workers' Compensation. This list shall be known as the "Conformed Panel of Physicians." An employee may obtain the services of any physician from the conformed panel and may thereafter also elect to change to another physician on the panel without prior authorization of the board. The physician so selected will then become the primary authorized treating physician in control of the employee's medical care and may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require without prior authorization by the board; provided, however, that any of the physicians to whom the employee is referred by the primary authorized treating physician shall not be permitted to arrange for any additional referrals; or", redesignated former paragraph (b)(3) as present paragraph (b)(2), and substituted "shall comply" for "must comply" near the beginning of the fourth sentence of paragraph (b)(2); and, in subsection (c), deleted "or Conformed Panel of Physicians" following "Panel of Physicians" in the introductory paragraph.

JUDICIAL DECISIONS

Worker's change of physician not justified.

Workers' Compensation Board's conclusion that the employer was not liable for payment of certain medical bills and not subject to a 15 percent late payment penalty was affirmed because if the employee was unhappy with the treating physician the employee's options were to ask the employer to change the employee's treating physician or to petition the Board for approval to change, but the employee was not entitled to change physicians unilaterally and require the employer to pay for it. Zheng v. New Grand Buffet, Inc., 321 Ga. App. 308, 740 S.E.2d 302 (2013).

Right to go to nonposted physician.

Because the evidence relied upon by the Appellate Division was incomplete, misstated that physical therapy was completed a year later than the therapy was, and included evidence that the employee sought treatment from a third physician after the employee's authorized physicians released the employee to work, a decision denying the employee's request for payment of unauthorized medical expenses was vacated; remand was required to determine whether the treatment was related to the employee's work injury. Lane v. Williams Plant Servs., 330 Ga. App. 416, 766 S.E.2d 482 (2014).

Because an employee's authorized physicians discharged the employee and released the employee to work without restrictions in April 2010, and the question of whether the employee's subsequent unauthorized medical treatment was related to the employee's work injury was not addressed below, the employee's claim was remanded for a determination of that issue. Lane v. Williams Plant Servs., 330 Ga. App. 416, 766 S.E.2d 482 (2014).

34-9-202. Examination of injured employee; request for autopsy; examination by physician designated by employee.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

34-9-203. Employer's pecuniary liability for medical charges; liability for medical malpractice; payment of reasonable charges; defense for failure to make payments; penalties.

(a) The pecuniary liability of the employer for medical, surgical, hospital service, or other treatment required, when ordered by the board, shall be limited to such charges as prevail in the State of Georgia for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons.

(b) The employer shall not be liable in damages for malpractice by a physician or surgeon furnished pursuant to this chapter, but the consequences of any malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

(c)(1) All reasonable charges for medical, surgical, hospital, and pharmacy goods and services shall be payable by the employer or its workers' compensation insurer within 30 days from the date that the employer or the insurer receives the charges and reports required by the board; provided, however, that the reimbursement for any charges for mileage incurred by the employee shall be paid within 15 days from the date that the employer or the insurer receives the charges and reports required by the board. The employer or insurer shall, within 30 days after receipt of charges and reports for health care goods or services or within 15 days after receipt of charges and reports for mileage incurred by the employee, mail to the provider of such health care goods or services or the employee who incurred the mileage the payment of such charges or a letter or other written notice that states the reasons the employer or insurer has for not paying the claim, either in whole or in part, and which also gives the person so notified a written itemization of any documents or other information needed to process the claim or any portion thereof.

(2) The failure by the employee or the health care goods or services provider to include with its submission of charges any reports or other documents required by the board shall constitute a defense for the employer's or insurer's failure to pay the submitted charges within 30 days of receipt of the charges for health care goods or services or within 15 days of receipt of the charges for mileage

incurred by the employee. However, if the employer or insurer fails to send the employee or the health care goods or services provider the requisite notice indicating a need for further documentation within 30 days of receipt of the charges for health care goods or services or within 15 days of receipt of the charges for mileage incurred by the employee, the employer and insurer shall be deemed to have waived the right to defend a claim for failure to pay such charges in a timely fashion on the grounds that the charges were not appropriately accompanied by required reports. Such waiver shall not extend to any other defense the employer and insurer may have with respect to a claim of untimely payment.

(3) If any charges for health care goods or services are not paid when due, or any reimbursement for health care goods or services paid by the employee or any charges for mileage incurred by the employee are not paid when due, penalties shall be added to such charges and paid at the same time as and in addition to the charges claimed for the health care goods or services. For any payment of charges paid more than 30 days after their due date, but paid within 60 days of such date, there shall be added to such charges an amount equal to 10 percent of the charges. For any payment of charges paid more than 60 days after their due date, but paid within 90 days of such date, there shall be added to such charges an amount equal to 20 percent of the charges. For any charges not paid within 90 days of their due date, in addition to the 20 percent add-on penalty, the employer or insurer shall pay interest on that combined sum in an amount equal to 12 percent per annum from the ninety-first day after the date the charges were due until full payment is made. All such penalties and interest shall be paid to the provider of the health care goods or services.

(4) Notwithstanding any other provision of this subsection, if the employee or the provider of health care goods or services fails to submit its charges to the employer or its workers' compensation insurer within one year of the date of service or the issuance of such goods or services or, in the case of an employee, within one year of the date of incurring mileage expenses, then the provider shall be deemed to have waived its right to collect such charges from the employer, its workers' compensation insurer, and the employee; and, in regard to mileage expenses, the employee shall be deemed to have waived his or her right to collect such charges from the employer or its workers' compensation insurer. (Ga. L. 1920, p. 167, § 27; Code 1933, § 114-502; Ga. L. 1937, p. 528; Ga. L. 1987, p. 806, § 5; Ga. L. 1995, p. 642, § 10; Ga. L. 2000, p. 1321, § 4; Ga. L. 2001, p. 748, § 5; Ga. L. 2003, p. 364, § 4; Ga. L. 2004, p. 631, § 34; Ga. L. 2006, p. 676, § 3/HB 1240; Ga. L. 2013, p. 651, § 2/HB 154.)

The 2013 amendment, effective July 1, 2013, in paragraph (c)(1), added the proviso at the end of the first sentence and, in the second sentence, inserted "and reports" near the beginning, inserted "or within 15 days after receipt of charges and reports for mileage incurred by the employee" in the middle, and inserted "or the employee who incurred the mileage" near the middle; in paragraph (c)(2), twice inserted "for health care goods or services or within 15 days of receipt of the charges for mileage incurred by the employee", and substituted "shall" for "will" in the next to the last sentence; and, in paragraph (c)(4), twice substituted "shall be" for "is".

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 185 (2013). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Doctors employed at on-site medical facility were co-workers. — Trial court erred by denying an employer's motion for summary judgment in a negligence suit filed by a worker alleging a failure to diagnosis the worker's cancer on the part of the doctors employed by the employer at an on-site medical facility as the doctors were co-employees of the worker and, therefore, the tort action was barred pursuant to the exclusivity provision of the Georgia Worker's Compensation Act, O.C.G.A. § 34-9-11(a). Rheem Mfg. v. Butts, 292 Ga. App. 523, 664 S.E.2d 878 (2008).

34-9-204. Compensation where death or disability caused by nonwork related injury.

JUDICIAL DECISIONS

New injury unrelated to prior work injury. — Superior court erred by reversing the State Board of Workers' Compensation's finding that an employee's torn knee ligament was a non-compensable new injury under O.C.G.A. § 34-9-204 resulting solely from a four-wheeler incident at the employee's home and was not caused by a prior injury occurring during the employee's job as a high risk warrant server because there was some evidence to support the finding including the employee's testimony that the pain suffered at the time of the four-wheeler incident was different from the employee's previous pain. Lowndes County Bd. of Comm'rs v. Connell, 305 Ga. App. 844, 701 S.E.2d 227 (2010).

34-9-205. Board approval of physician's fees, hospital, and other charges; collection of fees; schedule of charges; filing costs for peer review.

(a) Fees of physicians, charges of hospitals, charges for prescription drugs, and charges for other items and services under this chapter shall be subject to the approval of the State Board of Workers' Compensation. No physician, hospital, or other provider of services shall be entitled to collect any fee unless reports required by the board have been made.

(b) Annually, the board shall publish in print or electronically a list by geographical location of usual, customary, and reasonable charges for all medical services provided under subsection (a) of this Code section. The board may consult with medical specialists in preparing

said list. Fees within this list shall be presumed reasonable. No physician or hospital or medical supplier shall bill the employee for authorized medical treatment; provided, however, that if an employee fails to notify a physician, hospital, or medical supplier that he or she is being treated for an injury covered by workers' compensation insurance, such provider of medical services shall not be civilly liable to any person for erroneous billing for such covered treatment if the billing error is corrected by the provider upon notice of the same. The board may require recommendations from a panel of appropriate peers of the physician or hospital or other authorized medical supplier in determining whether the fees submitted and necessity of services rendered were reasonable. The recommendations of the panel of appropriate peers shall be evidence of the reasonableness of fees and necessity of service which the board shall consider in its determinations.

(c) Any party requesting peer review pursuant to the provisions of this Code section shall pay to the board such filing costs for peer review as established by the board; provided, however, that the prevailing party in any peer review request shall be entitled to recover its filing costs, if any, from the party which does not prevail. (Ga. L. 1920, p. 167, § 63; Code 1933, § 114-714; Ga. L. 1937, p. 528; Ga. L. 1978, p. 2220, § 15; Ga. L. 1985, p. 727, § 5; Ga. L. 1990, p. 1409, § 8; Ga. L. 1992, p. 6, § 34; Ga. L. 1997, p. 1367, § 7; Ga. L. 2007, p. 616, § 5/HB 424; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of subsection (b).

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

JUDICIAL DECISIONS

Jurisdiction.

State Board of Workers' Compensation did not have exclusive jurisdiction over medical care providers' claims, under a third party beneficiary theory, against workers' compensation insurer/payors as the breach of contract claims raised a dispute related to contractual rights and did not implicate the rights of injured employees. Aetna Workers' Comp Access, LLC v. Coliseum Med. Ctr., 322 Ga. App. 641, 746 S.E.2d 148 (2013).

Dismissal of breach of contract claim not rquired. — Workers' compensation insurers/payors were not entitled to dismissal of a breach of contract claim by medical care providers as the claim provided fair notice of the allegations, and the contract rights did not violate any law or public policy with respect to assertions as to promised reimbursement rates for services provided. Aetna Workers' Comp Access, LLC v. Coliseum Med. Ctr., 322 Ga. App. 641, 746 S.E.2d 148 (2013).

34-9-206. Reimbursement for costs of medical treatment.

JUDICIAL DECISIONS

Intervention not required. — Workers' compensation insurers/payors did not have a "property right" under the Workers' Compensation Act that required medical care providers to intervene in an injured employee's workers' compensation claim, rather than proceed in the superior court, in order to protect the payors' potential windfall. Aetna Workers' Comp Access, LLC v. Coliseum Med. Ctr., 322 Ga. App. 641, 746 S.E.2d 148 (2013).

34-9-207. Employee's waiver of confidentiality of communications with physician; release for medical records and information; refusal to sign release.

(a) When an employee has submitted a claim for workers' compensation benefits or is receiving payment of weekly income benefits or the employer has paid any medical expenses, that employee shall be deemed to have waived any privilege or confidentiality concerning any communications related to the claim or history or treatment of injury arising from the incident that the employee has had with any physician, including, but not limited to, communications with psychiatrists or psychologists. This waiver shall apply to the employee's medical history with respect to any condition or complaint reasonably related to the condition for which such employee claims compensation. Notwithstanding any other provision of law to the contrary, when requested by the employer, any physician who has examined, treated, or tested the employee or consulted about the employee shall provide within a reasonable time and for a reasonable charge all information and records related to the examination, treatment, testing, or consultation concerning the employee.

(b) When an employee has submitted a claim for workers' compensation benefits or is receiving payment of weekly income benefits or the employer has paid any medical expenses, the employee, upon request, shall provide the employer with a signed release for medical records and information related to the claim or history or treatment of injury arising from the incident, including information related to the treatment for any mental condition or drug or alcohol abuse and to such employee's medical history with respect to any condition or complaint reasonably related to the condition for which such employee claims compensation. Said release shall designate the provider to whom the release is directed. If a hearing is pending, any release shall expire on the date of the hearing.

(c) If the employee refuses to provide a signed release for medical information as required by this Code section and, in the opinion of the board, the refusal was not justified under the terms of this Code section,

then such employee shall not be entitled to any compensation at any time during the continuance of such refusal or to a hearing on the issues of compensability arising from the claim. (Code 1981, § 34-9-207, enacted by Ga. L. 1992, p. 1942, § 18; Ga. L. 2009, p. 118, § 4/HB 330.)

The 2009 amendment, effective July 1, 2009, added the second sentence in subsection (a); divided the former provisions of subsection (b) into subsections (b) and (c); in subsection (b), inserted ", upon request," in the first sentence and added "and to such employee's medical history with respect to any condition or complaint reasonably related to the condition for which such employee claims compensation" at the end, and substituted "to whom the release is directed. If a hearing is pending, any release shall" for "and shall state that it will" in the last sentences; and, in subsection (c), substituted "Code section and, in the opinion of the board, the refusal was not justified under the terms of this Code section, then such employee shall not be entitled to any compensation at any time during the continuance of such refusal or to a hearing on the issues of compensability arising from the claim" for "subsection, any weekly income benefits being received by the employee shall be suspended and no hearing shall be scheduled at the request of the employee until such signed release is provided" at the end.

Law reviews. — For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009). For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012). For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Employee not required to authorize provider to communicate with defense lawyer. — Employer was permitted to seek relevant protected health information informally by communicating orally with the employee's treating physician. O.C.G.A. § 34-9-207, by the statute's plain language, authorized a treating physician to disclose not just tangible documents, but also information related to the examination, treatment, testing, or consultation concerning the employee. Arby's Rest. Group, Inc. v. McRae, 292 Ga. 243, 734 S.E.2d 55 (2012).

34-9-208. Certification of managed health care providers.

Law reviews. — For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012).

Part 2

Method of Payment

34-9-220. Period of incapacity preceding payment of compensation.

JUDICIAL DECISIONS

Evidence supported denial of benefits. — Worker was properly denied workers' compensation benefits and terminated from employment for failing to return from a leave of absence because evidence supported the findings that the worker recovered from the chemical fume exposure incident based on a family doctor

releasing the worker to return to work with no restrictions and that the pneumonia the worker suffered was unrelated to the exposure incident. Royal v. Pulaski State Prison, 324 Ga. App. 275, 750 S.E.2d 179 (2013).

34-9-221. Procedure; payment controverted by employer; delinquency charge; enforcement.

(a) Income benefits shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability is controverted by the employer. Payments shall be made in cash, by negotiable instrument, or, upon agreement of the parties, by electronic funds transfer.

(b) The first payment of income benefits shall become due on the twenty-first day after the employer has knowledge of the injury or death, on which day all income benefits then due shall be paid. Thereafter, income benefits shall be due and payable in weekly installments; provided, however, that the board may, in its discretion, authorize payments to be made in different installments if it determines that this would be beneficial to all parties concerned. Such weekly payments shall be considered to be paid when due when mailed from within the State of Georgia to the address specified by the employee or to the address of record according to the board. Such weekly payments shall be considered to be paid when due when mailed from outside the State of Georgia no later than three days prior to the due date to the address specified by the employee or the address of record according to the board. Such weekly payments shall be considered to be paid when due at the time they are made by electronic funds transfer to an account specified by the employee.

(c) Upon making the first payment and upon suspension of payment for any cause, the employer shall immediately notify the board and the employee, in accordance with forms prescribed by the board, that payment of income benefits has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation, it shall file with the board, on or before the twenty-first day after knowledge of the alleged injury or death, a notice in accordance with the form prescribed by the board, stating that the right of compensation is controverted and stating the name of the claimant, the name of the employer, the date of the alleged injury or death, and the ground upon which the right to compensation is controverted.

(e) If any income benefits payable without an award are not paid when due, there shall be added to the accrued income benefits an amount equal to 15 percent thereof, which shall be paid at the same time as, but in addition to, the accrued income benefits unless notice is

filed under subsection (d) of this Code section or unless this nonpayment is excused by the board after a showing by the employer that owing to conditions beyond control of the employer the income benefits could not be paid within the period prescribed.

(f) If income benefits payable under the terms of an award are not paid within 20 days after becoming due, there shall be added to the accrued income benefits an amount equal to 20 percent thereof, which shall be paid at the same time as, but in addition to, the accrued benefits unless review of the award is granted by the board or unless this nonpayment is excused by the board after a showing by the employer that due to conditions beyond the control of the employer the income benefits could not be paid within the period prescribed.

(g) Within 30 days after final payment of compensation, the employer shall send to the board a notice in accordance with the form prescribed by the board, stating that final payment has been made and stating the total amount of compensation paid, the name of the employee and any other person to whom compensation has been paid, the date of the injury or death, and the date to which income benefits have been paid.

(h) Where compensation is being paid without an award, the right to compensation shall not be controverted except upon the grounds of change in condition or newly discovered evidence unless notice to controvert is filed with the board within 60 days of the due date of first payment of compensation.

(i) Where compensation is being paid with or without an award and an employer or insurer elects to controvert on the grounds of a change in condition or newly discovered evidence, the employer shall, not later than ten days prior to the due date of the first omitted payment of income benefits, file with the board and the employee or beneficiary a notice to controvert the claim in the manner prescribed by the board.

(j) The board or any administrative law judge shall issue such orders as may be necessary to enforce the penalty provisions of this Code section. (Ga. L. 1920, p. 167, § 55; Code 1933, § 114-705; Ga. L. 1978, p. 2220, § 10; Ga. L. 1985, p. 727, § 7; Ga. L. 1987, p. 806, § 6; Ga. L. 1990, p. 1409, § 11; Ga. L. 1992, p. 1942, § 19; Ga. L. 1998, p. 1508, § 6; Ga. L. 1999, p. 817, § 4; Ga. L. 2000, p. 1321, § 5; Ga. L. 2002, p. 846, § 3; Ga. L. 2012, p. 801, § 2/HB 971.)

The 2012 amendment, effective July 1, 2012, added "or unless this nonpayment is excused by the board after a showing by the employer that due to conditions beyond the control of the employer the income benefits could not be paid within the period prescribed" at the end of subsection (f).

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For survey article on workers' compensation law, see 60 Mercer

L. Rev. 433 (2008). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010). For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012). For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Notice to controvert invalid. — Appellate Division of the State Board of Workers' Compensation did not err in holding that the employer's notice to controvert was invalid on the ground that the employer had not paid an employee all the benefits the employee was due before filing the notice because the employer had two options to withhold benefits, either by deciding quickly not to pay benefits at all and filing the employer's notice to controvert within 21 days after the employer learned about the claim, or by paying benefits initially and filing the employer's notice to controvert within 60 days after payments were first due; either way, the Workers' Compensation Act, O.C.G.A. § 34-9-221, provides a mechanism for a relatively speedy resolution of the employer's unilateral decision to withhold benefits from the employee, and if the employer does not comply with the statutory requirements for terminating benefits, then the employer must bear the consequences. Crossmark, Inc. v. Strickland, 310 Ga. App. 303, 713 S.E.2d 430 (2011).

Cited in Lane v. Williams Plant Servs., 330 Ga. App. 416, 766 S.E.2d 482 (2014).

Practice and Procedure

Violation of statute not basis to toll statute of limitations. — Claimant's request for reinstatement of temporary total disability benefits based on a change in condition was time-barred under O.C.G.A. § 34-9-104(b)'s two-year limitation period because the fact that the employer failed to serve the claimant with various forms, in violation of O.C.G.A. § 34-9-221(c), was not grounds for extending the statute of limitations. United Grocery Outlet v. Bennett, 292 Ga. App. 363, 665 S.E.2d 27 (2008), cert. denied, 2008 Ga. LEXIS 939 (Ga. 2008).

Penalty for delay in payments. Superior court did not err in affirming the decision of the Appellate Division of the State Board of Workers' Compensation to award a workers' compensation claimant benefits following the employer/insurer's total failure to file notice of the employer's intention to suspend the worker's benefits because the employer/insurer's noncompliance with O.C.G.A. § 34-9-221 was without reasonable grounds; the employer/insurer's complete failure to file the required termination form required the employer to pay benefits until the hearing date, and not only did the employer/insurer fail to give notice to the claimant before terminating the claimant's income benefits, until the hearing, the employer never explained why the employer did so. S&B Eng'rs & Constructors Ltd. v. Bolden, 304 Ga. App. 534, 697 S.E.2d 260, cert. dismissed, No. S10C1789, 2010 Ga. LEXIS 912 (Ga. 2010).

District court properly concluded that the court lacked subject matter jurisdiction to order an employer and workers' compensation insurer to pay workers' compensation benefits because the State Board of Workers' Compensation had exclusive jurisdiction over such claims and the workers' compensation scheme provided the employee a remedy under O.C.G.A. §§ 34-9-221 and 34-9-240. Prine v. Chailland, Inc., No. 10-11706, 2010 U.S. App. LEXIS 23374 (11th Cir. Nov. 9, 2010) (Unpublished).

Because the Appellate Division failed to make any substituted findings of fact, it was impossible to determine whether any

evidence supported its conclusion that an administrative law judge had no discretion under O.C.G.A. § 34-9-108(b)(2) to assess attorney fees for a violation of O.C.G.A. § 34-9-221. J & D Trucking v. Martin, 310 Ga. App. 247, 712 S.E.2d 863 (2011).

It was error to reverse a penalty assessed against an employer under O.C.G.A. § 34-9-221(f) on the basis of a finding that O.C.G.A. § 34-9-15(b) gave the board discretion not to assess the penalty because the employee and the employer reached an approved liability stipulated settlement after a compensable injury was established, and the employer did not pay benefits within 20 days of the adoption of that agreement by the Workers' Compensation Board and the issuance of an award based thereon; O.C.G.A. § 34-9-15(b) only applied to no-liability stipulated settlements, and the parties entered into an approved liability stipulated settlement. Brewer v. Wellstar Health System, 314 Ga. App. 234, 723 S.E.2d 526 (2012).

Change in "status" included claim for late penalties after last benefit payment made. — Employee's status, i.e., the employee's legal condition vis-a-vis the employee's employer, was first established when the employer began paying benefits voluntarily and last established when the last benefit payment was made in 2002; therefore, the employee's application for penalties for late benefits payments under O.C.G.A. § 34-9-221 made in 2010, eight years later, was governed by the change in condition statute of limitations, O.C.G.A. § 34-9-104(b), rather than the general statute of limitations, O.C.G.A. § 34-9-82. Metro. Atlanta Rapid Transit Auth. v. Reid, 295 Ga. 863, 763 S.E.2d 695 (2014).

Application

Allowance of attorney's fees, etc.

Appellate Division of the State Board of Workers' Compensation did not err in assessing attorney fees against an employer under the Workers' Compensation Act, O.C.G.A. § 34-9-108(b)(2), because the evidence supported the Appellate Division's finding that the employer's noncompliance with the Act, O.C.G.A. § 34-9-221, was without reasonable grounds; the employer failed to pay an employee any income benefits for the first week the employee was not working or that the income benefits it did pay were short $100 per week, and the employer did not offer any explanation for the employer's noncompliance with O.C.G.A. § 34-9-221. Crossmark, Inc. v. Strickland, 310 Ga. App. 303, 713 S.E.2d 430 (2011).

34-9-222. Lump sum payments of all or part of compensation generally.

(a) Upon the application of any party when benefits have been continued for a period of not less than 26 weeks, if the board determines that it is for the best interest of the claimant to prevent extreme hardship or is essential to the rehabilitation of the claimant, the board may order that the liability of the employer for future income benefits be discharged by the payment of a lump sum equal to the sum of all future payments, reduced to their present value upon the basis of interest calculated at 5 percent per annum.

(b) Under the same requirements of subsection (a) of this Code section, the board may order the employer to make advance payments of a part of the future income benefits by payment of a lump sum equal to such part of future payments. The repayment of partial lump sum advance payments, together with interest of 5 percent per annum, may be accomplished by reducing the period of payment or reducing the

weekly benefit, or both, as may be directed by the board. (Ga. L. 1920, p. 167, § 43; Code 1933, § 114-417; Ga. L. 1937, p. 528; Ga. L. 1963, p. 141, § 10; Ga. L. 1978, p. 2220, § 8; Ga. L. 1988, p. 1679, § 22; Ga. L. 2013, p. 651, § 3/HB 154.)

The 2013 amendment, effective July 1, 2013, substituted "5 percent" for "7 percent" near the end of subsection (a) and in the middle of the last sentence of subsection (b).

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 185 (2013).

34-9-223. Lump sum payments to trustees.

Whenever the board deems it expedient, any lump sum, subject to the provisions of Code Section 34-9-222, or final settlement, subject to the provisions of Code Section 34-9-15, shall be paid by the employer to some suitable person or corporation appointed by the superior court of the county wherein the accident occurred or the original hearing was held as trustee to administer such payment for the benefit of the person or persons entitled thereto in the manner provided by the board. The receipt by such trustees of the amount so paid shall discharge the employer or anyone else who is liable therefor. (Ga. L. 1920, p. 167, § 44; Code 1933, § 114-418; Ga. L. 2009, p. 118, § 5/HB 330.)

The 2009 amendment, effective July 1, 2009, inserted "or final settlement, subject to the provisions of Code Section 34-9-15" near the beginning of the first sentence.

Law reviews. — For annual survey on workers' compensation, see 61 Mercer L. Rev. 399 (2009).

34-9-225. Effect of written receipt of widow or widower, minor, or guardian upon liability of employer; determination of obligation of employer to rival claimants.

(a) Whenever payment of compensation, in accordance with the terms of this chapter, is made to a widow or widower for her or his use or for her or his use and the use of the child or children, the written receipt thereon of such widow or widower shall release and discharge the employer.

(b) Whenever payment in accordance with the terms of this chapter is made to any employee 18 years of age or over, the written receipt of such person shall release and discharge the employer. In cases where a person under the age of 18 years shall be entitled to receive a sum or sums amounting in the aggregate to not more than $300.00 as compensation for injuries or as a distributive share by virtue of this chapter, the father or mother as natural guardian or the legally appointed conservator of such person shall be authorized and empowered to receive such moneys for the use and benefit of such person and to

receipt therefor; and the release or discharge by such father or mother as natural guardian or by the legally appointed conservator shall be in full and complete discharge of all claims or demands of such person thereunder.

(c) Whenever payment of over $300.00, in accordance with the terms of this chapter, is provided for a person under 18 years of age or for a person over 18 who is physically or mentally incapable of earning, the payment shall be made to his or her duly and legally appointed conservator or to some suitable person or corporation appointed as trustee by the superior court as provided in Code Section 34-9-223; and the receipt of such conservator or such trustee shall release and discharge the employer.

(d) Payment of death benefits by an employer in good faith to a dependent having a claim inferior to that of another or other dependents shall release and discharge the employer unless such dependent or dependents having a superior claim shall have given notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the board to decide between them. (Ga. L. 1920, p. 167, § 46; Code 1933, § 114-420; Ga. L. 2004, p. 631, § 34; Ga. L. 2011, p. 551, § 4/SB 134.)

The 2011 amendment, effective May 12, 2011, twice substituted "conservator" for "guardian" in subsections (b) and (c); and inserted "or her" in subsection (c).

34-9-226. Appointment of guardian for minor or incompetent claimant.

(a) Except as provided in this Code section, the only person capable of representing a minor or legally incompetent claimant entitled to workers' compensation benefits shall be (1) a conservator duly appointed and qualified by the probate court of the county of residence of such minor or legally incompetent person or by any court of competent jurisdiction within this state, or (2) a conservator or the equivalent thereof duly appointed by a court of competent jurisdiction outside the State of Georgia. Such conservator shall be required to file with the board a copy of the conservatorship returns filed annually with the probate court or with a court of competent jurisdiction outside the State of Georgia and give notice to all parties within 30 days of any change in status.

(b) The board shall have authority in and shall establish procedures for appointing conservators for purposes of administering workers' compensation rights and benefits without such conservator becoming the legally qualified conservator of any other property, without such conservator's actions being approved by a court of record, and without the posting of a bond, in only the following circumstances:

(1) The board may, in its discretion, authorize and appoint a conservator of a minor or legally incompetent person to receive and administer weekly income benefits on behalf of and for the benefit of said minor or legally incompetent person;

(2) The board may, in its discretion, authorize and appoint a conservator of a minor or legally incompetent person to compromise and terminate any claim and receive any sum paid in settlement for the benefits and use of said minor or legally incompetent person where the net settlement amount approved by the board is less than $100,000.00; however, where the natural parent is the guardian of a minor and the settlement amount is less than $15,000.00, no board appointed conservator shall be necessary. After settlement, the board shall retain the authority to resolve disputes regarding continuing representation of a board appointed conservator of a minor or legally incompetent person; and

(3) If a minor or legally incompetent person does not have a duly appointed representative or conservator, the board may, in its discretion, appoint a guardian ad litem to bring or defend an action under this chapter in the name of and for the benefit of said minor or legally incompetent person. However, no guardian ad litem appointed pursuant to this Code section shall be permitted to receive the proceeds from any such action except as provided in this Code section and the board shall have the authority to determine compensation, if any, for any guardian ad litem appointed pursuant to this Code section. (Code 1933, § 114-421, enacted by Ga. L. 1952, p. 271, § 2; Ga. L. 1963, p. 141, § 11; Ga. L. 1987, p. 396, § 1; Ga. L. 1996, p. 1291, § 9; Ga. L. 1999, p. 817, § 5; Ga. L. 2000, p. 136, § 34; Ga. L. 2004, p. 382, § 1; Ga. L. 2011, p. 551, § 5/SB 134; Ga. L. 2012, p. 801, § 3/HB 971.)

The 2011 amendment, effective May 12, 2011, substituted "conservator" for "guardian" throughout this Code section; substituted "conservatorship" for "guardianship" in the last sentence of subsection (a); and substituted "conservator's actions" for "guardian's actions" in the introductory language of subsection (b).

The 2012 amendment, effective July 1, 2012, in subsection (a), in the first sentence, substituted "(1) a conservator duly appointed and qualified by the probate court of the county of residence of such minor or legally incompetent person or by any court of competent jurisdiction within this state, or (2) a conservator or the equivalent thereof duly appointed" for "a conservator duly appointed and qualified by the probate court of the county of residence of such minor or legally incompetent person or", and substituted "Such" for "Said" at the beginning of the second sentence; deleted "temporary" preceding "conservators" in the introductory paragraph of subsection (b); deleted "temporary" preceding "conservator" in paragraphs (b)(1) and (b)(2); deleted "for a period not to exceed 52 weeks unless renewed or extended by order of the board" at the end of paragraph (b)(1); in paragraph (b)(2), substituted "$100,000.00; however, where the natural parent is the guardian of a minor and the settlement amount is less than $15,000.00, no board appointed conservator shall be necessary." for "$50,000.00" at the end of the first sentence, and added the second sentence; and deleted "to serve for a period not to exceed 52 weeks, unless renewed or extended by order of the board" following

"person" at the end of the first sentence of paragraph (b)(3).

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary administration, see 64 Mercer L. Rev. 325 (2012). For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012).

Part 3

Limitations on Payment

34-9-240. Effect of refusal of suitable employment by injured employee; attempting or refusing to attempt work with restrictions.

(a) If an injured employee refuses employment procured for him or her and suitable to his or her capacity, such employee shall not be entitled to any compensation, except benefits pursuant to Code Section 34-9-263, at any time during the continuance of such refusal unless in the opinion of the board such refusal was justified.

(b) Notwithstanding the provisions of subsection (a) of this Code section, if the authorized treating physician releases an employee to return to work with restrictions and the employer tenders a suitable job to such employee within those restrictions, then:

(1) If such employee attempts the proffered job for eight cumulative hours or one scheduled workday, whichever is greater, but is unable to perform the job for more than 15 working days, then weekly benefits shall be immediately reinstated, and the burden shall be upon the employer to prove that such employee is not entitled to continuing benefits; or

(2) If such employee attempts the proffered job for less than eight cumulative hours or one scheduled workday, whichever is greater, or refuses to attempt the proffered job, then the employer may unilaterally suspend benefits upon filing with the board the appropriate form with supporting documentation of the release to return to work with restrictions by the authorized treating physician, the tender of a suitable job within those restrictions, and a statement that such employee did not attempt the proffered job. Under those circumstances, the burden shall shift to the employee to prove continuing entitlement to benefits. (Ga. L. 1920, p. 167, § 33; Code 1933, § 114-407; Ga. L. 1994, p. 887, § 13; Ga. L. 2003, p. 364, § 5; Ga. L. 2013, p. 651, § 4/HB 154.)

The 2013 amendment, effective July 1, 2013, in subsection (b), substituted "such" for "the" five times; in paragraph (b)(1), near the beginning, substituted "for eight cumulative hours or one scheduled workday, whichever is greater, but" for "and"; and, near the beginning of paragraph (b)(2), inserted "attempts the proffered job for less than eight cumulative hours or one scheduled workday, whichever is greater, or".

Law reviews. — For article on the

2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 185 (2013).

JUDICIAL DECISIONS

Discretion afforded the board, etc. District court properly concluded that the court lacked subject matter jurisdiction to order an employer and workers' compensation insurer to pay workers' compensation benefits because the State Board of Workers' Compensation had exclusive jurisdiction over such claims and the workers' compensation scheme provided the employee a remedy under O.C.G.A. §§ 34-9-221 and 34-9-240. Prine v. Chailland, Inc., No. 10-11706, 2010 U.S. App. LEXIS 23374 (11th Cir. Nov. 9, 2010) (Unpublished).

34-9-242. Compensation for injury outside of state.

JUDICIAL DECISIONS

Insufficient evidence of representation to pay more for medical services due to location. — Transactions at issue in the lawsuit involved only two states, Mississippi, the state where the insurance policy was issued, the insurance company and the corporation were incorporated, and the corporation's employee was injured, and Georgia, the state in which the burn center rendered medical services, and there was no evidence in the record to support that any benefits were required under Georgia workers' compensation law, O.C.G.A. § 34-9-242. The only benefits required were the benefits required under Mississippi's workers' compensation law, which stated that reimbursement for out-of-state services shall be based on the workers' compensation fee schedule for the state in which services were rendered, and the burn center had been paid more than what was required under both Georgia's and Mississippi's workers' compensation medical fee schedules; therefore, because there was no genuine issue of material fact as to whether the insurance company fully complied with the terms of the insurance contract, the insurance company and the corporation's motion for summary judgment was granted as to the burn center's third party beneficiary claim. Joseph M. Still Burn Ctrs., Inc. v. AmFed Nat'l Ins. Co., No. 109-34, 2010 U.S. Dist. LEXIS 31299 (S.D. Ga. Mar. 31, 2010).

34-9-243. Effect of payments made when not due; employer credit or reduction for employer funded payments pursuant to disability plan.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

JUDICIAL DECISIONS

No burden on employer to show entitlement to credit. — Employee who prevailed on a workers' compensation claim for TTD was only entitled to the difference between the TTD due and the TPD benefits already paid by the employer; the employer was not required to prove that the employer was entitled to a credit under O.C.G.A. § 34-9-243. N. Fulton Reg'l Hosp. v. Pearce-Williams, 312 Ga. App. 388, 718 S.E.2d 583 (2011).

34-9-245. Repayment of overpayment by claimant.

Law reviews. — For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

ARTICLE 7

COMPENSATION SCHEDULES

Law reviews. — For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

34-9-260. Basis and method for computing compensation generally.

Law reviews. — For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012). For annual survey on workers' compensation law, see 66 Mercer L. Rev. 247 (2014).

JUDICIAL DECISIONS

ANALYSIS

PAYMENT OF WAGES

Payment of Wages

Average weekly wage calculated correctly. — Award of workers' compensation benefits was upheld because there was some evidence to support the administrative law judge's calculation of the claimant's average weekly wage under O.C.G.A. § 34-9-260(3) based on the claimant's testimony that the claimant was supposed to work from the car wash's opening until its close. Cho Carwash Property, LLC v. Everett, 326 Ga. App. 6, 755 S.E.2d 823 (2014).

RESEARCH REFERENCES

ALR. — Right to workers' compensation for injury suffered by employee while driving employer's vehicle, 28 ALR6th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — compensability under particular circumstances, 39 ALR6th 445.

Right to compensation under state workers' compensation statute for injuries sustained during or as result of horseplay, joking, fooling, or the like, 41 ALR6th 207.

Injury to employee as arising out of or in course of employment for purposes of state workers' compensation statute — effect of employer-provided living quarters, room and board, or the like, 42 ALR6th 61.

Workers' compensation: value of employer-provided room, board, or clothing as factor in determining basis for or calculation of amount of compensation under state workers' compensation statute, 48 ALR6th 387.

34-9-261. Compensation for total disability.

While the disability to work resulting from an injury is temporarily total, the employer shall pay or cause to be paid to the employee a

weekly benefit equal to two-thirds of the employee's average weekly wage but not more than $550.00 per week nor less than $50.00 per week, except that when the weekly wage is below $50.00, the employer shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under this Code section shall be payable for a maximum period of 400 weeks from the date of injury; provided, however, that in the event of a catastrophic injury as defined in subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall be paid until such time as the employee undergoes a change in condition for the better as provided in paragraph (1) of subsection (a) of Code Section 34-9-104. (Ga. L. 1920, p. 167, § 30; Ga. L. 1922, p. 185, § 3; Ga. L. 1923, p. 92, § 3; Code 1933, § 114-404; Ga. L. 1937, p. 528; Ga. L. 1949, p. 1357, § 1; Ga. L. 1955, p. 210, § 1; Ga. L. 1963, p. 141, § 5; Ga. L. 1968, p. 3, § 1; Ga. L. 1973, p. 232, § 3; Ga. L. 1974, p. 1143, § 3; Ga. L. 1975, p. 190, § 4; Ga. L. 1978, p. 2220, § 3; Ga. L. 1981, p. 842, § 2.1; Ga. L. 1982, p. 2485, §§ 1, 7; Ga. L. 1985, p. 727, § 8; Ga. L. 1990, p. 1409, § 14; Ga. L. 1992, p. 1942, § 21; Ga. L. 1994, p. 887, § 14; Ga. L. 1996, p. 1291, § 11; Ga. L. 1997, p. 1367, § 8; Ga. L. 1999, p. 817, § 7; Ga. L. 2000, p. 1321, § 6; Ga. L. 2001, p. 748, § 6; Ga. L. 2003, p. 364, § 6; Ga. L. 2005, p. 1210, § 7/HB 327; Ga. L. 2007, p. 616, § 6/HB 424; Ga. L. 2013, p. 651, § 5/HB 154; Ga. L. 2015, p. 1079, § 3/HB 412.)

The 2013 amendment, effective July 1, 2013, substituted "$525.00" for "$500.00" near the middle of the first sentence.

The 2015 amendment, effective July 1, 2015, substituted "$550.00" for "$525.00" in the middle of the first sentence.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010). For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 185 (2013).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Statute of limitations.

Appellate Division of the State Board of Workers' Compensation properly denied an employee's request for catastrophic injury payments under O.C.G.A. § 34-9-261 because the employee did not experience a "change in condition" within the limitations period under O.C.G.A. § 34-9-104(b) for purposes of additional disability income benefits. Williams v. Conagra Poultry of Athens, Inc., 295 Ga. App. 744, 673 S.E.2d 105 (2009), cert. denied, No. S09C0832, 2009 Ga. LEXIS 337 (Ga. 2009).

Untimely request for catastrophic injury designation. — Driver's claim for catastrophic designation of an injury was time-barred under O.C.G.A. § 34-9-104(b) because, inasmuch as the driver sought additional income benefits, the driver had

two years from the date of the last income benefits payment to file the WC-R1CATEE claim form for a catastrophic injury designation, but failed to do so; the driver's earlier filing of a WC-14 form did not toll the statute of limitation because the only benefits sought in the driver's WC-14 form were temporary disability benefits. There was no request for a catastrophic injury designation in the WC-14 form. Kroger Co. v. Wilson, 301 Ga. App. 345, 687 S.E.2d 586 (2009), cert. denied, No. S10C0606, 2010 Ga. LEXIS 341 (Ga. 2010).

Pre-existing condition aggravated. — Superior court properly remanded an employee's workers' compensation case to the Workers' Compensation Board's Appellate Division to consider whether the employee had pre-existing cognitive dysfunctions that were worsened by the employee's work until the conditions became disabling because in its failure to do so the Appellate Division made an error of law; regardless of whether the employee suffered a work-related head injury, if the employee's employment aggravated a pre-existing condition to the point where the employee could no longer work, the employee was entitled to workers' compensation benefits. Home Depot v. McCreary, 306 Ga. App. 805, 703 S.E.2d 392 (2010).

Board did not reach decision based upon erroneous legal theory. — Superior court erred in reversing the decision of the State Board of Workers' Compensation denying an employee's claim for temporary total disability benefits because the superior court failed to conduct an "any evidence" standard of review; the board did not reach a decision based upon an erroneous legal theory because the board concluded that the employee failed to engage in a diligent job search based upon factors that were within the employee's control. Brown Mech. Contrs., Inc. v. Maughon, 317 Ga. App. 106, 728 S.E.2d 757 (2012).

Total Disability

2. Definitions

Request for catastrophic injury designation was change in condition authorizing additional TTD benefits. — An employee's timely filing of a request for catastrophic designation, Form WC-R1CATEE, constituted a timely application for additional temporary total disability (TTD) income benefits under O.C.G.A. § 34-9-104(b), although the form contained no request for additional TTD benefits, because the request would entitle the employee to additional benefits pursuant to O.C.G.A. § 34-9-261. Ga. Inst. of Tech. v. Hunnicutt, 303 Ga. App. 536, 694 S.E.2d 190, cert. denied, No. S10C1299, 2010 Ga. LEXIS 721 (Ga. 2010).

4. Total Incapacity for Work

Claimant performed diligent job search. — Superior court did not err in reversing the finding of the State Board of Workers' Compensation that a workers' compensation claimant performed a diligent job search because the claimant gave uncontroverted testimony that the claimant followed the Georgia Department of Labor's instructions during the job search; the appellate division's decision imposed an additional burden upon the claimant with respect to matters that were beyond the claimant's control and inconsistent with the instructions that the claimant was given during the hiring process. R.R. Donnelley v. Ogletree, 312 Ga. App. 475, 718 S.E.2d 825 (2011), cert. denied, No. S12C0480, 2012 Ga. LEXIS 659 (Ga. 2012).

6. Determination of Compensation

Evidence of disability properly not excluded. — Medical evidence supported a finding that a worker was temporarily totally disabled because the fact that a form stating the worker was disabled was

Total Disability (Cont'd)
6. Determination of Compensation (Cont'd)

signed by a physician's assistant did not require exclusion of the form as the standard of proof imposed upon a worker seeking temporary total disability benefits under O.C.G.A. § 34-9-261 did not impose a requirement that the form be signed by a physician. Ready Mix USA, Inc. v. Ross, 314 Ga. App. 775, 726 S.E.2d 90 (2012), cert. denied, No. S12C1202, 2012 Ga. LEXIS 664 (Ga. 2012).

34-9-262. Compensation for temporary partial disability.

Except as otherwise provided in Code Section 34-9-263, where the disability to work resulting from the injury is partial in character but temporary in quality, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the difference between the average weekly wage before the injury and the average weekly wage the employee is able to earn thereafter but not more than $367.00 per week for a period not exceeding 350 weeks from the date of injury. (Ga. L. 1920, p. 167, § 31; Code 1933, § 114-405; Ga. L. 1949, p. 1357, § 2; Ga. L. 1955, p. 210, § 2; Ga. L. 1963, p. 141, § 6; Ga. L. 1968, p. 3, § 2; Ga. L. 1973, p. 232, § 4; Ga. L. 1974, p. 1143, § 4; Ga. L. 1975, p. 190, § 2; Ga. L. 1978, p. 2220, § 4; Ga. L. 1985, p. 727, § 9; Ga. L. 1990, p. 1409, § 15; Ga. L. 1992, p. 1942, § 22; Ga. L. 1994, p. 887, § 15; Ga. L. 1997, p. 1367, § 9; Ga. L. 1999, p. 817, § 8; Ga. L. 2000, p. 1321, § 6; Ga. L. 2001, p. 748, § 7; Ga. L. 2003, p. 364, § 7; Ga. L. 2005, p. 1210, § 8/HB 327; Ga. L. 2007, p. 616, § 7/HB 424; Ga. L. 2013, p. 651, § 6/HB 154; Ga. L. 2015, p. 1079, § 4/HB 412.)

The 2013 amendment, effective July 1, 2013, substituted "$350.00" for "$334.00" near the end of this Code section.

The 2015 amendment, effective July 1, 2015, substituted "$367.00" for "$350.00" near the end of this Code section.

Law reviews. — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007). For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 185 (2013).

JUDICIAL DECISIONS

Analysis

Impairment of Earning Capacity

Impairment of Earning Capacity

Pre-existing condition aggravated. — Superior court properly remanded an employee's workers' compensation case to the Workers' Compensation Board's Appellate Division to consider whether the employee had pre-existing cognitive dysfunctions that were worsened by the employee's work until the conditions became disabling because in its failure to do so the Appellate Division made an error of law; regardless of whether the employee suffered a work-related head injury, if the employee's employment aggravated a pre-existing condition to the point where the employee could no longer work, the employee was entitled to workers' compensation benefits. Home Depot v. McCreary, 306 Ga. App. 805, 703 S.E.2d 392 (2010).

34-9-263. Compensation for permanent partial disability.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Pre-existing condition aggravated. — Superior court properly remanded an employee's workers' compensation case to the Workers' Compensation Board's Appellate Division to consider whether the employee had pre-existing cognitive dysfunctions that were worsened by the employee's work until the conditions became disabling because in its failure to do so the Appellate Division made an error of law; regardless of whether the employee suffered a work-related head injury, if the employment aggravated a pre-existing condition to the point where the employee could no longer work, the employee was entitled to workers' compensation benefits. Home Depot v. McCreary, 306 Ga. App. 805, 703 S.E.2d 392 (2010).

34-9-264. Compensation for loss of hearing caused by harmful noise; procedure for measuring degree of hearing impairment; eligibility for compensation; liability of employer.

(a) As used in this Code section, the term:

(1) "Harmful noise" means sound in employment capable of producing occupational loss of hearing as defined in paragraph (2) of this subsection. Sound of an intensity of less than 90 decibels, A scale, shall be deemed incapable of producing occupational loss of hearing as defined in this Code section.

(2) "Occupational loss of hearing" means a permanent sensorineural loss of hearing in both ears caused by prolonged exposure to harmful noise in employment.

(b) Compensation based on 66 2/3 percent of average weekly wages, subject to limitations of Code Section 34-9-261, shall be payable for loss of hearing caused by harmful noise, subject to the following rules which shall be applicable in determining eligibility, amount, and period during which compensation shall be payable:

(1) In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above 3,000 cycles per second are not to be considered as constituting compensable hearing disability. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid. The board may order the employer to provide the employee with an original hearing aid if it will materially improve the employee's ability to hear;

(2) The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards such as International Standards Organization (ISO) or American National Standards Institute, Inc. (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 25 decibels or less in the four frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the four frequencies, then the same shall constitute and be total or 100 percent compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the four frequencies shall be added together and divided by four to determine the average decibel loss. For each decibel of loss exceeding 25 decibels an allowance of 1 1/2 percent shall be made up to the maximum of 100 percent which is reached at 92 decibels. In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment;

(3) There shall be payable for total occupational loss of hearing 150 weeks of compensation and for partial occupational loss of hearing such proportion of these periods of payment as such partial loss bears to the total loss;

(4) Except in instances of preexisting loss of hearing due to disease, trauma, or congenital deafness in one ear, no compensation shall be payable under this Code section unless prolonged exposure to harmful noise in employment has caused loss of hearing in both ears as hereinafter provided;

(5) No compensation benefits shall be payable for temporary total or temporary partial disability under this Code section; and there shall be no award for tinnitus or a psychogenic hearing loss;

(6) The regular use of employer provided protective devices capable of preventing loss of hearing from the particular harmful noise where the employee works shall constitute removal from exposure to such particular harmful noise. No compensation benefits shall be payable for occupational loss of hearing caused by harmful noise if the employee fails to regularly utilize the employer provided protection device or devices which are capable of preventing loss of hearing from the particular harmful noise where the employee works;

(7) The employer liable for the compensation in this Code section shall be the employer in whose employment the employee was last exposed to harmful noise in Georgia during a period of 90 working days or parts thereof; and an exposure during a period of less than 90 working days or parts thereof shall be held not to be an injurious exposure; provided, however, that, in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to harmful noise and if after such insurance carrier goes off the risk said employee has been further exposed to harmful noise, although not exposed for 90 working days or parts thereof, so as to constitute an injurious exposure, such carrier shall, nevertheless, be liable;

(8) An employer shall become liable for the entire occupational hearing loss to which his employment has contributed; but, if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to harmful noise within six months preceding such test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has previously been paid or awarded. The employer shall be liable only for the difference between the percentage of occupational hearing loss determined as of the date of disability and the percentage of loss established by preemployment and audiometric examinations excluding, in any event, hearing losses arising from nonoccupational causes.

(c) No claim for compensation for occupational hearing loss shall be filed until six months have elapsed since exposure to harmful noise with the last employer. The last day of such exposure shall be the date of disability. (Code 1933, § 114-406.1, enacted by Ga. L. 1974, p. 1143, § 6; Ga. L. 1982, p. 3, § 34; Ga. L. 2012, p. 801, § 4/HB 971.)

The 2012 amendment, effective July 1, 2012, in paragraphs (b)(1) and (b)(2), substituted "1,000, 2,000, and 3,000" for "1,000, and 2,000"; substituted "above 3,000" for "above 2,000" in the first sentence of paragraph (b)(1); and, in paragraph (b)(2), substituted "four frequencies" for "three frequencies" throughout, in the second sentence, deleted "American Standards Association, Inc. (ASA)," preceding "International Standards", and deleted a comma following "(ISO)", in the fourth and seventh sentences, substituted "25 decibels" for "15 decibels (26 db if ANSI or ISO)", and, in the fifth and seventh sentences, substituted "92 decibels" for "82 decibels (93 db if ANSI or ISO)".

Law reviews. — For annual survey on workers' compensation, see 64 Mercer L. Rev. 341 (2012).

34-9-265. Compensation for death resulting from injury and other causes; penalty for death from injury proximately caused by intentional act of employer; payment of death benefits where no dependents found.

(a) When an employee is entitled to compensation under this chapter for an injury received and death ensues from any cause not resulting from the injury for which he or she was entitled to compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

(b) If death results instantly from an accident arising out of and in the course of employment or if during the period of disability caused by an accident death results proximately therefrom, the compensation under this chapter shall be as follows:

(1) The employer shall, in addition to any other compensation, pay the reasonable expenses of the employee's burial not to exceed $7,500.00. If the employee leaves no dependents, this shall be the only compensation;

(2) The employer shall pay the dependents of the deceased employee, which dependents are wholly dependent on his or her earnings for support at the time of the injury, a weekly compensation equal to the compensation which is provided for in Code Section 34-9-261 for total incapacity;

(3) If the employee leaves dependents only partially dependent on his or her earnings for their support at the time of the injury, the weekly compensation for these dependents shall be in the same proportion to the compensation for persons wholly dependent as the average amount contributed weekly by the deceased to the partial dependents bears to the deceased employee's average weekly wages at the time of the injury; and

(4) When weekly payments have been made to an injured employee before his or her death, compensation to dependents shall begin on the date of the last of such payments; but the number of weekly payments made to the injured employee under Code Section 34-9-261, 34-9-262, or 34-9-263 shall be subtracted from the maximum 400 week period of dependency of a spouse provided by Code Section 34-9-13; and in no case shall payments be made to dependents except during dependency.

(c) The compensation provided for in this Code section shall be payable only to dependents and only during dependency.

(d) The total compensation payable under this Code section to a surviving spouse as a sole dependent at the time of death and where

there is no other dependent for one year or less after the death of the employee shall in no case exceed $220,000.00.

(e) If it shall be determined that the death of an employee was the direct result of an injury proximately caused by the intentional act of the employer with specific intent to cause such injury, then there shall be added to the weekly income benefits paid to the dependents, if any, of the deceased employee a penalty of 20 percent; provided, however, such penalty in no case shall exceed $20,000.00. For the purpose of this subsection, an employer shall be deemed to have intended an injury only if the employer had actual knowledge that the intended act was certain to cause such injury and knowingly disregarded this certainty of injury. Nothing in this subsection shall limit the effect of Code Section 34-9-11.

(f) Each insurer or self-insurer which, in a compensable death case, finds no dependent or dependents qualifying to receive dependency benefits shall pay to the State Board of Workers' Compensation one-half of the benefits which would have been payable to such dependent or dependents or the sum of $10,000.00, whichever is less. All such funds paid to the board shall be deposited in the general fund of the state treasury. If, after such payment has been made, it is determined that a dependent or dependents qualified to receive benefits exist, then the insurer or self-insurer shall be entitled to reimbursement by refund for moneys collected in error. (Ga. L. 1920, p. 167, § 38; Ga. L. 1922, p. 190, § 4; Ga. L. 1923, p. 92, § 4; Code 1933, § 114-413; Ga. L. 1939, p. 234, § 1; Ga. L. 1949, p. 1357, § 3; Ga. L. 1955, p. 210, § 4; Ga. L. 1963, p. 141, § 9; Ga. L. 1968, p. 3, § 3; Ga. L. 1973, p. 232, § 6; Ga. L. 1974, p. 1143, § 9; Ga. L. 1975, p. 190, § 6; Ga. L. 1982, p. 3, § 34; Ga. L. 1983, p. 700, § 2; Ga. L. 1985, p. 727, § 11; Ga. L. 1988, p. 660, § 1; Ga. L. 1992, p. 1942, § 23; Ga. L. 1995, p. 642, § 11; Ga. L. 1996, p. 1291, § 13; Ga. L. 1998, p. 1508, § 8; Ga. L. 1999, p. 817, § 9; Ga. L. 2000, p. 1321, § 7; Ga. L. 2004, p. 631, § 34; Ga. L. 2006, p. 676, § 4/HB 1240; Ga. L. 2015, p. 1079, § 5/HB 412.)

The 2015 amendment, effective July 1, 2015, substituted "$220,000.00" for "$150,000.00" at the end of subsection (d).

Law reviews. — For annual survey on workers' compensation, see 65 Mercer L. Rev. 311 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration

Limitation of benefits to dependents constitutional. — Because the Workers' Compensation Act's, O.C.G.A. § 34-9-1 et seq., differing treatment of dependent and non-dependent heirs is not irrational and serves the legitimate gov-

General Consideration (Cont'd)

ernment purpose of workers' compensation, the Act's limitation on recovery by non-dependent heirs does not violate the due process or equal protection rights guaranteed by the United States Constitution. Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Death Arising Out of and in the Course of Employment

Factual issues existed precluding summary judgment. — Trial court properly denied summary judgment to an employer in a wrongful death action because questions of fact existed as to whether the deceased employee had left work for the day or was merely on a break and whether workers' compensation was applicable following the employee being shot and killed at a convenience store associated with the employer. Dixie Roadbuilders, Inc. v. Sallet, 318 Ga. App. 228, 733 S.E.2d 511 (2012).

Employee struck by train when arriving on premises. — Ingress/egress rule applied and an employee's death from being struck by a train was compensable because the employee had no alternative route to the building but to cross the tracks, the entrance road crossing the railroad track was part of the leased business premises, the employee arrived just before the employee's shift started, and the employer had control over the entrance road pursuant to the lease. Bonner-Hill v. Southland Waste Sys. of Ga., Inc., 330 Ga. App. 151, 767 S.E.2d 803 (2014).

RESEARCH REFERENCES

ALR. — Right to workers' compensation for injury suffered by employee while driving employer's vehicle, 28 ALR6th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — compensability under particular circumstances, 39 ALR6th 445.

Right to compensation under state workers' compensation statute for injuries sustained during or as result of horseplay, joking, fooling, or the like, 41 ALR6th 207.

ARTICLE 8

COMPENSATION FOR OCCUPATIONAL DISEASE

Part 1

General Provisions

34-9-281. Prerequisites to compensation for occupational disease.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Cited in Antonio-Candelaria v. Gibbs Farms, Inc., No. 1:06-CV-39 (WLS), 2008 U.S. Dist. LEXIS 16295 (M.D. Ga. Mar. 4, 2008).

ARTICLE 9

SUBSEQUENT INJURY TRUST FUND

34-9-352. Creation and authority of Subsequent Injury Trust Fund; state treasurer as custodian.

There is established a Subsequent Injury Trust Fund which shall be of a perpetual, nonlapsing nature for the sole purpose of making payments in accordance with this article. The fund shall be administered by the administrator of the Subsequent Injury Trust Fund. All moneys in the fund shall be held in trust and shall not be money or property of the state. The board of trustees created by Code Section 34-9-354 shall be authorized to invest the moneys of the fund in the same manner as provided by law for investments by domestic insurers (Chapter 11 of Title 33). The board of trustees shall be authorized to designate the state treasurer as custodian of the fund for the purpose of investing the fund. In the event the state treasurer is appointed custodian he shall have exclusive control of the investment of the fund; and the trustees shall be absolved of any responsibility for such fund. The custodian shall be authorized to disburse moneys from the fund only upon written order of the administrator. (Code 1933, § 114-901, enacted by Ga. L. 1977, p. 608, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in the fifth and sixth sentences.

34-9-355. Appointment of administrator; administration of article; members of retirement system.

(a) The board of trustees shall appoint the administrator of the fund, and he or she shall serve at the pleasure of the trustees and without term of office. All officials, personnel, and employees of the Board of Trustees of the Subsequent Injury Trust Fund are placed in the classified service as defined by Code Section 45-20-2 unless otherwise excluded by law; provided, however, that except for purposes of determining compensation, the administrator shall not be in the classified service.

(b) The administrator shall administer this article under such policies and rules and regulations as may be adopted by the trustees and shall be authorized to hire such personnel as may be necessary to carry out the purposes of the fund.

(c) All employees of the fund shall be deemed to be employees of the state and, as such, members of the Employees' Retirement System of

Georgia. (Code 1933, § 114-908, enacted by Ga. L. 1977, p. 608, § 1; Ga. L. 1979, p. 891, §§ 1, 2; Ga. L. 1982, p. 3, § 34; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-44/HB 642.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" twice in subsection (a).

The 2012 amendment, effective July 1, 2012, in subsection (a), inserted "or she" in the first sentence, and rewrote the second sentence, which read: "All officials, personnel, and employees of the Board of Trustees of the Subsequent Injury Trust Fund are placed in the classified service of the State Personnel Administration unless otherwise excluded under the authority of Code Sections 45-20-1 through 45-20-11 and 45-20-14 or other statutory authority; provided, however, that except for purposes of determining compensation, the administrator shall not be in the classified service of the State Personnel Administration."

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

34-9-358. Payment of assessments to fund by insurers and self-insurers; calculations.

(a) Prior to January 1, 2010, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursement made from the fund during the preceding calendar year less the amount of the net assets in the fund as of December 31 of the preceding calendar year which the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year.

(b) On and after January 1, 2010, but prior to January 1, 2016, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursement made from the fund during the preceding calendar year as of December 31 of the preceding calendar year which the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year but not to exceed $100 million.

(c) On and after January 1, 2016, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion

of $100 million the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year but not to exceed $100 million.

(d) The administrator is authorized to create and maintain a reserve of surplus moneys as may be deemed necessary by the board of trustees in order to ensure sufficient moneys will be available for the payment of all claims that are to be paid by the fund in accordance with Code Section 34-9-368.

(e) The administrator is authorized to reduce or suspend assessments for the fund when a completed actuarial survey shows further assessments are not needed for all bona fide claims that are to be paid by the fund.

(f)(1) When further assessments are not needed as all eligible workers' compensation claims for which the fund is liable in accordance with Code Section 34-9-368 have been paid and all related administrative costs have been accrued or paid and a balance remains in the fund, all insurers and self-insurers in this state who have maintained workers' compensation insurance in this state for any time during the preceding three years from the date that the last claim has been paid shall be entitled to a pro rata refund of assessments previously collected and unexpended in the remaining fund balance.

(2) The calculation for such pro rata refund to be paid by the fund to each individual insurer and self-insurer shall be determined by the following formula:

The balance remaining in the fund shall be the numerator and shall be divided by the total amount of assessments for workers' compensation coverage paid by all insurers and self-insurers during the three-year period, which shall be the denominator. The quotient of the numerator and denominator shall be multiplied by the total amount of assessments that are paid by the individual insurer or self-insurer during the three-year period. The product of those numbers shall represent the amount to be paid to such insurer or self-insurer as its pro rata refund from the balance remaining in the fund.

(3) Nothing in this subsection shall preclude the board of trustees from authorizing a loss portfolio transfer of any unresolved claims.

(g) An employer who has ceased to be a self-insurer prior to the end of the calendar year shall be liable to the fund for the assessment of the calendar year. Such employer who has ceased to be a self-insurer shall continue to be liable to the fund for assessments in subsequent calendar

years so long as payments are made on any workers' compensation claims made while in self-insured status.

(h) The initial assessment of each insurer or self-insurer for the purpose of generating revenue to begin operation of the fund shall be in the amount of one-half of 1 percent of the workers' compensation premiums collected by the insurer for the preceding calendar years from an employer who is subject to this chapter or the equivalent of such in the case of a self-insurer. (Code 1933, § 114-910, enacted by Ga. L. 1977, p. 608, § 1; Ga. L. 1982, p. 3, § 34; Ga. L. 1995, p. 642, § 12; Ga. L. 2007, p. 268, § 1/SB 131; Ga. L. 2008, p. 349, § 1/HB 1186; Ga. L. 2015, p. 1079, § 6/HB 412.)

The 2015 amendment, effective July 1, 2015, in subsection (b), substituted "On and after January 1, 2010, but prior to January 1, 2016," for "On or after January 1, 2010," at the beginning; added subsection (c); designated the former last sentence of subsection (b) as present subsection (d); and redesignated former subsections (c) through (f) as present subsections (e) through (h), respectively.

34-9-361. Employer's knowledge of employee's preexisting permanent impairment.

It shall be incumbent upon the employer to establish that the employer had reached an informed conclusion prior to the occurrence of the subsequent injury or occupational disease that the preexisting impairment is permanent and is likely to be a hindrance or obstacle to employment or reemployment. Where, however, the employer establishes knowledge of the preexisting permanent impairment prior to the subsequent injury, there shall be a presumption that the employer considered the condition to be permanent and to be, or likely to be, a hindrance or obstacle to employment where the condition is one of the following:

(1) Epilepsy;

(2) Diabetes;

(3) Arthritis which is an obstacle or hindrance to employment or reemployment;

(4) Amputated foot, leg, arm, or hand;

(5) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75 percent bilaterally;

(6) Residual disability from poliomyelitis;

(7) Cerebral palsy;

(8) Multiple sclerosis;

(9) Parkinson's disease;

(10) Cardiovascular disorders;

(11) Tuberculosis;

(12) Intellectual disability, provided the employee's intelligence quotient is such that he falls within the lowest 2 percent of the general population; provided, however, that it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population;

(13) Psychoneurotic disability following confinement for treatment in a recognized medical or mental institution for a period in excess of six months;

(14) Hemophilia;

(15) Sickle cell anemia;

(16) Chronic osteomyelitis;

(17) Ankylosis of major weight-bearing joints;

(18) Hyperinsulism;

(19) Muscular dystrophy;

(20) Total occupational loss of hearing as defined in Code Section 34-9-264;

(21) Compressed air sequelae;

(22) Ruptured intervertebral disc; or

(23) Any permanent condition which, prior to the occurrence of the subsequent injury, constitutes a 20 percent impairment of a foot, leg, hand, or arm, or of the body as a whole. (Code 1933, § 114-914, enacted by Ga. L. 1977, p. 608, § 1; Ga. L. 2015, p. 385, § 4-15/HB 252.)

The 2015 amendment, effective July 1, 2015, substituted "intellectual disability" for "mental retardation" at the beginning of paragraph (12).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

34-9-362. Notice by employer or insurer of claim against fund; request for a hearing.

JUDICIAL DECISIONS

Timeliness of claim.

Because an advance of future income benefits paid to foreclose extreme hardship, rather than to compensate for present lost wages, was not subject to conversion to the equivalent of weekly income

benefits paid within the meaning of the 78-week limitation on the receipt of income benefits as set out in O.C.G.A. § 34-9-362(a), a city was entitled to consideration of the city's claim for reimbursement. Subsequent Injury Trust Fund v. City of Atlanta, 310 Ga. App. 581, 713 S.E.2d 706 (2011).

34-9-365. Injuries to which article is applicable.

RESEARCH REFERENCES

ALR. — Injury to employee as arising out of or in course of employment for purposes of state workers' compensation statute — effect of employer-provided living quarters, room and board, or the like, 42 ALR6th 61.

34-9-368. Reimbursement of self-insured employers or insureds; actuarial study required; dissolution of Subsequent Injury Trust Fund.

(a) The Subsequent Injury Trust Fund shall not reimburse a self-insured employer or an insurer for a subsequent injury for which a claim is made for an injury occurring after June 30, 2006. The Subsequent Injury Trust Fund shall continue to reimburse self-insured employers or insurers for claims for injuries occurring on and prior to June 30, 2006, which qualify for reimbursement.

(b) Self-insured employers and insurers shall continue to pay assessments pursuant to Code Section 34-9-358 to the extent necessary to fund claims for injuries occurring on and prior to June 30, 2006.

(c) Upon or in contemplation of the final payment of all claims filed for subsequent injuries for which claims are filed for injuries occurring on and prior to June 30, 2006, the board of trustees shall adopt and implement resolutions providing for the final dissolution of the Subsequent Injury Trust Fund. Such resolutions shall become effective when all claims made for injuries occurring on and prior to June 30, 2006, have been fully paid or otherwise resolved and shall include provisions for:

(1) The termination of assessments against insurers or self-insurers;

(2) The pro rata refund of assessments previously collected and unexpended, consistent with the provisions of subsection (f) of Code Section 34-9-358;

(3) The termination of employment of the employees of the fund or the transfer of employment of any employees to any other state agency desiring to accept them;

(4) A final accounting of the financial affairs of the fund; and

(5) The transfer of the books, records, and property of the fund to the custody of the Insurance Department.

Upon the completion of all matters provided for in such resolutions, but not later than December 31, 2023, the Subsequent Injury Trust Fund and the members of its board of trustees shall be discharged from their duties except for such personnel necessary to administer any remaining claims. (Code 1981, § 34-9-368, enacted by Ga. L. 2004, p. 152, § 1; Ga. L. 2005, p. 1489, § 1/HB 200; Ga. L. 2008, p. 349, § 2/HB 1186; Ga. L. 2015, p. 1079, § 7/HB 412.)

The 2015 amendment, effective July 1, 2015, in subsection (c), substituted "subsection (f)" for "subsection (d)" near the end of paragraph (c)(2), substituted "Insurance Department" for "State Board of Workers' Compensation" at the end of paragraph (c)(5), and substituted "December 31, 2023" for "December 31, 2020" in the middle of the undesignated paragraph.

ARTICLE 10

SELF-INSURERS GUARANTY TRUST FUND

34-9-380. Purpose of article.

It is the purpose of this article through the establishment of a guaranty trust fund to provide for the continuation of workers' compensation benefits due and unpaid, excluding penalties, fines, and attorneys' fees assessed against a participant, when a self-insured employer becomes insolvent. (Code 1981, § 34-9-380, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, inserted "assessed against a participant" near the end of this Code section.

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010). For annual survey of law on workers' compensation, see 62 Mercer L. Rev. 383 (2010).

34-9-381. Definitions.

As used in this article, the term:

(1) "Applicant" means an employee entitled to workers' compensation benefits.

(2) "Board" means the State Board of Workers' Compensation.

(3) "Board of trustees" means the board of trustees of the fund.

(4) "Fund" means the Self-insurers Guaranty Trust Fund established by this article.

(5) "Insolvent self-insurer" means a self-insurer who files for relief under the federal Bankruptcy Act, a self-insurer against whom involuntary bankruptcy proceedings are filed, a self-insurer for whom a receiver is appointed in a federal or state court of this or any other jurisdiction, or a self-insurer who is determined by the board to be in

default of its workers' compensation obligations or requirements according to rules and regulations promulgated by the board of trustees and approved by the board.

(6) "Participant" means a self-insurer who is a member of the fund and exclusive of those entities described in Article 5 of this chapter.

(7) "Self-insurer" means a private employer, including any hospital authority created pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law," that has been authorized to self-insure its payment of workers' compensation benefits pursuant to this chapter, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter.

(8) "Trustee" means a member of the Self-insurers Guaranty Trust Fund board of trustees. (Code 1981, § 34-9-381, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1995, p. 638, § 1; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, in paragraph (5), deleted "or" preceding "a self-insurer" near the middle and substituted ", or a self-insurer who is determined by the board to be in default of its workers' compensation obligations or requirements according to" for "and who is determined to be insolvent by" near the end; and deleted "or" preceding "captive insurers" near the end of paragraph (7).

34-9-382. Establishment of Self-insurers Guaranty Trust Fund; use of fund; application to be accepted in fund.

(a) There is established a Self-insurers Guaranty Trust Fund for the sole purpose of making payments in accordance with this article. The fund shall be administered by an administrator appointed by the chairperson of the board of trustees with the approval of the board of trustees. All moneys in the fund shall be held in trust and shall not be money or property of the state or the participants and shall be exempt from levy, attachment, garnishment, or civil judgment for any claim or cause of action other than for not making payments in accordance with this article. The board of trustees shall be authorized to invest the moneys of the fund in the same manner as provided by law for investments in government backed securities.

(b) All returns on investments shall be retained by the fund. The funds of the Self-insurers Guaranty Trust Fund shall be for the purposes of compensating employees or their dependents who are eligible to receive workers' compensation benefits from their employers

pursuant to the provisions of this chapter when, pursuant to this Code section, the board has determined that compensation benefits due are unpaid or interrupted due to the insolvency or default of a participant. Moneys in the fund may be used to compensate an employee or his or her dependents for any type of injury or occupational disease or death, including medical or rehabilitation expenses which are compensable under this chapter against a participant, and all claims for related administrative fees, operating costs of the fund, attorneys' fees incurred by the board of trustees or at its direction, and other costs reasonably incurred by the board of trustees. Payment from the Self-insurers Guaranty Trust Fund shall be made in accordance with this chapter.

(c) As a condition of self-insurance, all private employers, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter, must make application to and be accepted in the Self-insurers Guaranty Trust Fund. (Code 1981, § 34-9-382, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, in subsection (a), substituted "chairperson" for "chairman" in the second sentence and added "and shall be exempt from levy, attachment, garnishment, or civil judgment for any claim or cause of action other than for not making payments in accordance with this article" at the end of the third sentence; in subsection (b), in the second sentence, inserted "or their dependents" and inserted "or default", and, in the third sentence, inserted "or his or her dependents" and substituted "fund" for "board of trustees"; and substituted "all private employers" for "a private employer" near the beginning of subsection (c).

34-9-383. Membership of board of trustees of fund.

(a) Each member of the board of trustees shall be an employee of a participant. The board of trustees shall consist of a chairperson and six trustees elected by the participants. The board of trustees shall initially be appointed by the Governor not later than August 1, 1990. Three of the initial trustees shall be appointed for terms of office which shall end on January 1, 1993, and the chairperson and the three other initial trustees shall be appointed for terms of office which shall end on January 1, 1995. Thereafter, each trustee shall be elected to a four-year term and shall continue to serve unless otherwise ineligible under subsection (b) of this Code section. No later than 90 days prior to the end of any member's term of office, the chairperson shall select a nominating committee from among the participants to select candidates for election by the participants for the following term. In the event the chairperson fails to complete his or her term of office, a successor

shall be elected by the board of trustees to fill the unexpired term of office.

(b) A vacancy in the office of any elected member of the board of trustees shall occur upon the member's resignation, death, or conviction of a felony or when the trustee's employer no longer qualifies as a self-insured participant or the trustee is no longer an employee of a participant. The board of trustees may remove any trustee from office on a formal finding of incompetence, neglect of duty, or malfeasance in office. Within 30 days after the office of any elected member becomes vacant for any reason, the board of trustees shall elect a successor to fill that office for the unexpired term. Failure to fill the vacant office shall not invalidate any action taken by the board of trustees provided that said action is taken pursuant to an affirmative vote of not less than four trustees. (Code 1981, § 34-9-383, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1995, p. 638, § 2; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, substituted "shall be" for "will be" near the end of the last sentence in subsection (a); and, in subsection (b), in the first sentence, inserted "the member's", inserted "or", deleted the comma following "felony" and inserted "trustee's", substituted "trustee" for "member" in the second sentence, and added the last sentence.

34-9-384. General powers of board of trustees.

The board of trustees shall possess all powers necessary and convenient to accomplish the objectives prescribed by this article, including, but not limited to, the following:

(1) Not later than 90 days from its appointment, the board of trustees must make and submit to the board for approval such bylaws, rules, regulations, and resolutions as are necessary to carry out its responsibilities, including, but not limited to, the establishment of an application fee. The board of trustees may carry out its responsibilities directly or by contract or other instrument and may purchase such services, borrow money, purchase excess or liability insurance, levy penalties, fines, and assessments and collect such funds as it deems necessary to effectuate its activities and protect the members of the board of trustees and its administrator, agents, and employees. The board of trustees shall appoint, retain, and employ such persons as it deems necessary to achieve the purposes of the board of trustees. All expenses incurred pursuant to this provision shall be paid from the fund;

(2) The board of trustees shall meet not less than quarterly and shall meet at other times upon the call of the chairperson, issued to the trustees in writing not less than 48 hours prior to the day and hour of the meeting, or upon a request for a meeting presented in writing to the chairperson not less than 72 hours prior to the

proposed day and hour of the meeting and signed by at least a majority of the trustees, whereupon the chairperson shall provide notice issued in writing to the trustees not less than 48 hours prior to the meeting and shall convene the meeting at the time and place stated in the request;

(3) Four trustees shall constitute a quorum to transact business at any meeting, and the affirmative vote of four trustees shall be necessary for any action taken by the board of trustees. No vacancy shall otherwise impair the rights of the remaining trustees to exercise all of the powers of the board of trustees;

(4) The board of trustees shall serve without compensation, but each member shall be entitled to be reimbursed for necessary and actual expenses incurred in the discharge of his or her official duties; and

(5) The board of trustees shall have the right to bring and defend actions only in the name of the fund. The administrator, the trustees, and the trustees' employers, agents, and employees shall not be liable jointly or individually for matters arising from or out of their conduct of the affairs of the fund while acting in the scope of their employment. (Code 1981, § 34-9-384, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1998, p. 128, § 34; Ga. L. 1998, p. 227, § 1; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, in paragraph (1), in the second sentence, substituted "or liability insurance, levy penalties, fines, and assessments" for "insurance, levy penalties, and fines," and inserted "administrator, agents, and" near the end; and substituted the present provisions of the second sentence of paragraph (5) for the former provisions, which read: "Neither the trustees nor their employers shall be liable individually for matters arising from or out of the conduct of the affairs of the fund."

34-9-385. Bankruptcy of participants.

(a) Any participant who files for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings are filed or for whom a receiver is appointed shall file written notice of such fact with the board and the board of trustees within 30 days of the occurrence of such event.

(b) Any person who files an application for adjustment of a claim against a participant who is in default or has filed for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings have been filed or for whom a receiver has been appointed must file a written notice of such fact with the board and the board of trustees within 30 days of such person's knowledge of the event.

(c) Upon receipt of any notice as provided in subsection (a) or (b) of this Code section, the board shall determine whether the participant is

insolvent or in default according to procedures established by the board of trustees and approved by the board. Such determination shall be made within a reasonable time after the date the board and board of trustees receive notification as provided in subsection (a) or (b) of this Code section.

(d) When a participant is determined to be in default or an insolvent self-insurer, the board of trustees is empowered to and shall assume on behalf of the participant its outstanding workers' compensation obligations excluding penalties, fines, and claimant's attorneys' fees assessed against the participant pursuant to subsection (b) of Code Section 34-9-108 and shall take all steps necessary to collect, recover, and enforce all outstanding security, indemnity, insurance, or bonds furnished by such participant guaranteeing the payment of compensation provided in this chapter for the purpose of paying outstanding obligations of the participant. The board of trustees shall convert and deposit into the fund such security and any amounts received under agreements of surety, guaranty, insurance, or otherwise on behalf of the participant. Any amounts remaining from such security, indemnity, insurance, bonds, guaranties, and sureties, following payment of all compensation costs and related administrative expenses and fees of the board of trustees including attorneys' fees, and following collection of all amounts assessed and received pursuant to subsections (a) and (d) of Code Section 34-9-121 and any applicable rule of the board may be refunded by the fund as directed by the board of trustees, subject to the approval of the board, to the appropriate party one year from the date of final payment and closure of all claims, provided no outstanding self-insured liabilities remain against the fund and the applicable statute of limitations has run.

(e) The fund shall be a party in interest in all proceedings involving workers' compensation claims against a participant whose workers' compensation obligations are to be paid or assumed by the fund and shall be subrogated to the rights of the participant. In such proceedings the fund shall assume and may exercise all rights and defenses of the participant, including, but not limited to:

(1) The right to appear, defend, and appeal claims;

(2) The right to receive notice of, investigate, adjust, compromise, settle, and pay claims; and

(3) The right to investigate, handle, and controvert claims.

(f) In any proceeding in bankruptcy in which the payment of benefits has been stayed, the board of trustees, through a designated representative, may appear and move to lift the stay so that the orderly administration of claims can proceed. The fund shall be subrogated to the rights and claims of any claimant against a participant to the extent

of the payments made by the fund to the claimant and may pursue recovery against the participant to the extent of the claims paid or to be paid.

(g) The board of trustees shall notify all employees who have pending claims against a participant for workers' compensation benefits which are subject to the provisions of this article of the name, address, and telephone number of the party administering and defending their claim.

(h) The board may, in its discretion, direct that the Self-insurers Guaranty Trust Fund honor and pay, in whole or in part, the contractual fee arrangement between an attorney and a claimant pursuant to subsection (a) of Code Section 34-9-108, provided that application to honor the fee arrangement is made after notice pursuant to subsection (g) of this Code section and subject to consideration of objections by any party.

(i) No provision of this Code section shall impair any claims in the insolvent self-insurer's bankruptcy by the board of trustees, any employee, or any provider of services related to the insolvent self-insurer's workers' compensation obligations, to the extent those claims remain unpaid, including but not limited to medical providers or attorneys representing either the insolvent self-insurer or claimants. (Code 1981, § 34-9-385, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1998, p. 128, § 34; Ga. L. 1998, p. 1508, § 10; Ga. L. 2009, p. 118, § 6/HB 330; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2009 amendment, effective July 1, 2009, substituted "subsections (a) and (d)" for "subsections (a) and (c)" near the middle of the last sentence of subsection (d).

The 2010 amendment, effective July 1, 2010, inserted "is in default or" near the beginning of subsection (b); inserted "or in default" in the middle of the first sentence of subsection (c); in subsection (d), substituted "security" for "securities" three times, in the first sentence, inserted "in default or" near the beginning and inserted "against the participant" near the middle, inserted "of trustees" in the second sentence, and, in the third sentence, inserted "expenses and", substituted "collection" for "exhaustion", inserted "and closure of all claims", inserted "self-insured", and added "and the applicable statute of limitations has run" at the end; in subsection (e), substituted "fund" for "board of trustees" three times and substituted "are to be paid" for "have been paid" near the end of the first sentence; in subsection (f), substituted "may" for "shall" near the middle of the first sentence and added the second sentence; and inserted "the board of trustees, any employee, or" near the beginning of subsection (i).

34-9-386. Assessment of participants; liability of fund and participants for claims; revocation of participant's authority to be self-insured.

(a)(1) The board of trustees shall, commencing January 1, 1991, assess each participant in accordance with paragraph (2) of this

subsection. Upon reaching a funded level of $10 million net of all liabilities, all annual assessments against participants who have paid at least three prior assessments shall cease except as specifically provided in paragraph (4) of this subsection.

(2) Assessment for each new participant in the first calendar year of participation shall be $8,000.00. Thereafter, assessments shall be in accordance with paragraphs (3) and (4) of this subsection.

(3) After the first calendar year of participation, the annual assessment of each participant shall be made on the basis of a percentage of the total of indemnity and medical benefits paid by, or on behalf of, the participant during the previous calendar year. Except as provided in paragraph (2) of this subsection for the first calendar year of participation and paragraph (4) of this subsection, a participant will be assessed 1.5 percent of the medical and indemnity benefits paid by that participant during the previous calendar year or $2,000.00, whichever is greater. The maximum amount of annual assessments under this paragraph, not including those special assessments provided for in paragraph (4) of this subsection, in any calendar year against a participant shall be $8,000.00.

(4) If the fund is reduced to an amount below $5 million net of all liabilities as the result of the payment of claims, the administration of claims, or the costs of administration of the fund, the board of trustees may levy a special assessment against participants upon approval by the board, according to the same procedure for assessment set forth in paragraph (3) of this subsection, in an amount sufficient to increase the funded level to $5 million net of all liabilities; provided, however, that such special assessment in any calendar year against any one participant shall not exceed $8,000.00.

(5) Funds obtained by such assessments shall be used only for the purposes set forth in this article and shall be deposited upon receipt by the board of trustees into the fund. If payment of any assessment made under this article is not made within 30 days of the sending of the notice to the participant, the board of trustees is authorized to do any or all of the following:

(A) Levy fines or penalties;

(B) Proceed in court for judgment against the participant, including the amount of the assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;

(C) Proceed directly against the security pledged by the participant for the collection of same; or

(D) Seek revocation of the participant's insured status.

(b)(1) The fund shall be liable for claims arising out of injuries occurring after January 1, 1991; provided, however, no claim may be asserted against the fund until the funding level has reached $1.5 million.

(2) All active participants shall be required to maintain surety bonds or the board of trustees may, in its discretion, accept any irrevocable letter of credit or other acceptable forms of security in the amount of no less than $250,000.00. In addition, each active participant shall be required to purchase excess insurance for statutory limits with a self-insured retention specified by the board, and the excess policy shall include the bankruptcy endorsement required by the board and board of trustees. For participants who are no longer active, security in an amount commensurate with their remaining exposure, as determined by the board, shall be required until all self-insured claims have been closed and all applicable statutes of limitation have run.

(c) A participant who ceases to be a self-insurer shall be liable for any and all assessments made pursuant to this Code section for so long as indemnity or medical benefits are paid for claims which originated when the participant was a self-insurer. Assessments of such a participant shall be based on the indemnity and medical benefits paid by the participant during the previous calendar year.

(d) Upon refusal to pay assessments, penalties, or fines to the fund or upon refusal to comply with a board order increasing security, the fund may treat the self-insurer as being in default with this chapter and the self-insurer shall be subject to revocation of its board authorization to self-insure and forfeiture of its security. (Code 1981, § 34-9-386, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1991, p. 94, § 34; Ga. L. 1995, p. 638, § 3; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, in subsection (a), inserted "net of all liabilities" near the beginning of the second sentence of paragraph (a)(1), substituted "$8,000.00" for "$4,000.00" at the end of the first sentence of paragraph (a)(2), rewrote paragraphs (a)(3) and (a)(4), in paragraph (a)(5), substituted "do any or all of the following:" for "proceed in court for judgment against the participant, including the amount of the assessment, the costs of suit, interest, and reasonable attorneys' fees or proceed directly against the security pledged by the participant" and added subparagraphs (a)(5)(A) through (a)(5)(D); in paragraph (b)(2), in the first sentence, inserted "active" near the beginning and substituted "$250,000.00" for "$100,000.00 until the board, after consultation with the board of trustees, has determined that the financial capability of the trust fund and the participant no longer warrants any form of security" at the end, and added the last two sentences; in subsection (c), substituted "for so long as indemnity or medical benefits are paid" for "as long as indemnity compensation is paid" and inserted "and medical" near the end; and, in subsection (d), substituted "or upon refusal to comply with a board order increasing security" for "when due", substituted "default" for "noncompliance" and added "and forfeiture of its security" at the end.

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

34-9-387. Reimbursement and security deposit from participant for compensation obligations.

(a) The board of trustees shall have the right and duty to obtain reimbursement from any participant for payment of compensation obligations in the amount of the participant's compensation obligations assumed by the board of trustees and paid from the fund by the board of trustees as directed by the board, including, but not limited to, claims for all benefits and reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the board of trustees.

(b) The board of trustees shall have the right and obligation to use the security deposit of any participant, its excess insurance coverage, and of any other guarantee to pay the participant's workers' compensation obligation assumed by the board of trustees, including reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the board of trustees.

(c) The board of trustees shall be a party in interest in any action or proceeding to obtain the security deposit of a participant for the payment of the participant's compensation obligations, in any action or proceeding under the participant's excess insurance policy, and in any other action or proceeding to enforce an agreement of any security deposit or captive or excess insurance carrier and from any other guarantee to satisfy such obligations. The fund is authorized to file a claim against a bankrupt participant or the participant's agents and seek reimbursement for any payments made by the fund on behalf of the participant pursuant to this chapter. The fund is subrogated to the claim of any employee whose benefits are paid by the fund. Further, the fund shall have a lien against any reimbursement payments the participant is entitled to from the Subsequent Injury Trust Fund in an amount equal to the payments made by the fund to satisfy the participant's liability for workers' compensation benefits. (Code 1981, § 34-9-387, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1998, p. 227, § 2; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, in the first sentence of subsection (a), substituted "duty" for "obligation" and inserted "payment of" near the middle; substituted "coverage, and of any other guarantee" for "carrier, and of any other guarantor" near the middle of the first sentence of subsection (b); and, in subsection (c), in the first sentence, substituted "the participant's" for "its" near the beginning and substituted "deposit or captive or excess insurance carrier and from any other guarantee" for "deposit, excess insurance carrier, and from any other guar-

antor" near the end, and added the second through fourth sentences.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, a misspelling of "participant's" was corrected in the second sentence of subsection (c).

34-9-388. Reports of participant's insolvency; participant's audits; review of applications for self-insurance and recommendations thereon.

(a) It shall be the duty of the board to report to the board of trustees when the board has reasonable cause to believe that any participant examined or being examined may be in danger of insolvency.

(b) The board shall, at the inception of a participant's self-insured status and at least annually thereafter, so long as the participant remains self-insured, furnish the board of trustees with a complete, original bound copy of each participant's audit performed in accordance with generally accepted accounting standards by an independent certified public accounting firm, three to five years of loss history, name of the person or company to administer claims, and any other pertinent information submitted to the board to authenticate the participant's self-insured status. The board of trustees may contract for the services of a qualified certified public accountant or firm to review, analyze, and make recommendations on these documents. All financial information submitted by a participant shall be considered confidential and not public information.

(c) The board of trustees shall make reports and recommendations to the board upon any matter germane to the solvency, liquidation, or rehabilitation of any participant. The board of trustees shall examine the same documents as required in subsection (b) of this Code section. Such reports and recommendations shall not be considered public documents.

(d) The board of trustees shall have the authority to review all applications for self-insurance and shall make recommendations to the board concerning the acceptance of the prospective self-insurer. If the board rejects in part or in whole the recommendations of the board of trustees, the board shall give written notice to the board of trustees ten days prior to accepting the application for self-insurance. (Code 1981, § 34-9-388, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1995, p. 638, § 4; Ga. L. 1998, p. 227, § 3; Ga. L. 2010, p. 126, § 4/HB 1101.)

The 2010 amendment, effective July 1, 2010, near the middle of the first sentence of subsection (b), substituted "accounting" for "auditing" and inserted a comma.

34-9-389. State absolved of responsibility for debts incurred under fund.

Editor's notes. — Ga. L. 2010, p. 126, § 4, effective July 1, 2010, reenacted this Code section without change. Refer to bound volume for text of this Code section.

ARTICLE 11

DRUG-FREE WORKPLACE PROGRAMS

Cross references. — Drug testing of recipients of TANF benefits, § 49-4-193. Drug test required for applicants and recipients of certain government benefits, § 49-4-20.

34-9-415. Conduct of testing; types of tests; random testing; procedures for specimen collection and testing; laboratory qualifications, procedures, and reports; confirmation tests.

(a) All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the State Board of Workers' Compensation pursuant to this article. However, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing.

(b) An employer is required to conduct the following types of tests in order to qualify for the workers' compensation insurance premium discounts provided under Code Section 34-9-412 and Code Section 33-9-40.2:

(1) An employer must require job applicants to submit to a substance abuse test after extending an offer of employment. Testing at the employer worksite with on-site testing kits that satisfy testing criteria in this article shall be deemed suitable and acceptable postoffer testing. Limited testing of job applicants by an employer shall qualify under this paragraph if such testing is conducted on the basis of reasonable classifications of job positions;

(2) An employer must require an employee to submit to reasonable suspicion testing;

(3) An employer must require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group;

(4) If the employee in the course of employment enters an Employee Assistance Program or a rehabilitation program as the result

of a positive test, the employer must require the employee to submit to a substance abuse test as a follow-up to such program. However, if an employee voluntarily entered the program, follow-up testing is not required. If follow-up testing is conducted, the frequency of such testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee;

(5) If the employee has caused or contributed to an on the job injury which resulted in a loss of worktime, the employer must require the employee to submit to a substance abuse test; and

(6) Urinalysis conducted by laboratories, testing at the employer worksite with on-site testing kits, or use of oral testing that satisfies testing criteria in this article shall be deemed suitable and acceptable substance abuse testing.

(c) Nothing in this Code section shall prohibit a private employer from conducting random testing or other lawful testing of employees.

(d) All specimen collection and testing under this Code section shall be performed in accordance with the following procedures:

(1) A specimen shall be collected with due regard to the privacy of the individual providing the specimen and in a manner reasonably calculated to prevent substitution or contamination of the specimen;

(2) Specimen collection shall be documented, and the documentation procedures shall include:

(A) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and

(B) An opportunity for the employee or job applicant to record any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The providing of information shall not preclude the administration of the test, but shall be taken into account in interpreting any positive confirmed results;

(3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which will reasonably preclude specimen contamination or adulteration;

(4) Each initial test conducted under this Code section shall be conducted by a laboratory as described in subsection (e) of this Code section or conducted using an on-site testing kit or oral testing that satisfies the testing criteria in this article. Each confirmation test conducted under this Code section, not including the taking or

collecting of a specimen to be tested, shall be conducted by a laboratory as described in subsection (e) of this Code section;

(5) A specimen for a test may be taken or collected by any of the following persons:

(A) A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment;

(B) A qualified person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the Georgia Department of Community Health;

(C) A qualified person certified or employed by a collection company;

(D) For the purpose of a pre-job offer screening only, a person trained and qualified to conduct on-site testing; or

(E) For the purpose of a pre-job offer screening only, a person trained and qualified to conduct oral testing, if an oral test is used;

(6) Within five working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant;

(7) The employer shall provide to the employee or job applicant, upon request, a copy of the test results;

(8) An initial test having a positive result must be confirmed by a confirmation test conducted in a laboratory in accordance with the requirements of this article;

(9) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested. This requirement shall apply to all specimens, including specimens collected using on-site testing kits;

(10) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees;

(11) An employee or job applicant shall pay the cost of any additional tests not required by the employer; and

(12) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which

formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer pursuant to Code Section 34-9-420 and retained by the employer for at least one year.

(e)(1) No laboratory may analyze initial or confirmation drug specimens unless:

(A) The laboratory is approved by the National Institute on Drug Abuse or the College of American Pathologists;

(B) The laboratory has written procedures to ensure the chain of custody; and

(C) The laboratory follows proper quality control procedures including, but not limited to:

(i) The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment and periodic use of blind samples for overall accuracy;

(ii) An internal review and certification process for drug test results conducted by a person qualified to perform that function in the testing laboratory;

(iii) Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results; and

(iv) Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(2) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state:

(A) The name and address of the laboratory which performed the test and the positive identification of the person tested;

(B) Positive results on confirmation tests only, or negative results, as applicable;

(C) A list of the drugs for which the drug analyses were conducted; and

(D) The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests.

No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this article.

(3) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(f) If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test. Only laboratories as described in subsection (e) of this Code section shall conduct confirmation drug tests.

(g) All positive initial tests, regardless of the testing methodology used, shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse as such technology becomes available in a cost-effective form. (Code 1981, § 34-9-415, enacted by Ga. L. 1993, p. 1512, § 2; Ga. L. 1994, p. 97, § 34; Ga. L. 2001, p. 800, §§ 4, 5; Ga. L. 2007, p. 532, § 1/SB 96; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 3/HB 509.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in subparagraph (d)(5)(B). The second 2009 amendment, effective July 1, 2009, substituted "physician assistant" for "physician's assistant" in subparagraph (d)(5)(A).

Law reviews. — For survey article on labor and employment law, see 59 Mercer L. Rev. 233 (2007).

34-9-421. Rules and regulations.

JUDICIAL DECISIONS

Cited in Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

CHAPTER 11

RESERVED

Editor's notes. — Ga. L. 2012, p. 1114, § 5/SB 446, effective May 2, 2012, reserved the designation of this chapter.

34-11-1 through 34-11-22.

Editor's notes. — Ga. L. 2012, p. 1114, § 2/SB 446, effective May 2, 2012, redesignated former Code Sections 34-11-1 through 34-11-17 as present Code Sections 25-15-10 through 25-15-27, respectively; repealed Code Section 34-11-18;

redesignated former Code Sections 34-11-19 through 34-11-21 as present Code Sections 25-15-28 through 25-15-30, respectively; and repealed Code Section 34-11-22.

Former Code Section 34-11-18, relating to bonding of chief and deputy inspectors, was based on Code 1981, § 34-11-18, enacted by Ga. L. 1984, p. 1227, § 1.

Former Code Section 34-11-22, relating to severability of provisions, was based on Code 1981, § 34-11-22, enacted by Ga. L. 1987, p. 1349, § 10.

CHAPTER 12

RESERVED

Editor's notes. — Ga. L. 2012, p. 1114, § 5/SB 446, effective May 2, 2012, reserved the designation of this chapter.

34-12-1 through 34-12-21.

Editor's notes. — Ga. L. 2012, p. 1114, § 3/SB 446, effective May 2, 2012, redesignated former Code Sections 34-12-1 through 34-12-3 as present Code Sections 25-15-50 through 25-15-52, respectively; repealed Code Section 34-12-4; and redesignated former Code Sections 34-12-5 through 34-12-21 as present Code Sections 25-15-53 through 25-15-69, respectively.

Former Code Section 34-12-4, relating to powers of board, was based on Code 1981, § 34-12-4, enacted by Ga. L. 1985, p. 1453, § 1.

CHAPTER 13

RESERVED

Editor's notes. — Ga. L. 2012, p. 1114, § 5/SB 446, effective May 2, 2012, reserved the designation of this chapter.

34-13-1 through 34-13-23.

Editor's notes. — Ga. L. 2012, p. 1144, § 4/SB 446, effective May 2, 2012, redesignated former Code Sections 34-13-1 through 34-13-3 as present Code Sections 25-15-80 through 25-15-82, respectively; repealed Code Section 34-13-4; and redesignated former Code Sections 34-13-5 through 34-13-23 as present Code Sections 25-15-83 through 25-15-101, respectively.

Former Code Section 34-13-4, relating to powers of advisory board, was based on

Code 1981, § 34-13-4, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1.

CHAPTER 14

GEORGIA WORKFORCE INVESTMENT BOARD

Sec.
34-14-1 through 34-14-28. [Repealed].

Effective date. — This chapter (now Article 1 of this chapter) became effective May 20, 2010.

Editor's notes. — Ga. L. 2010, p. 84, § 1, effective May 20, 2010, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 34-14-1 and 34-14-2, relating to the Governor's Employment and Training Council, and was based on Ga. L. 1989, p. 443, § 5.

34-14-1 through 34-14-28.

Reserved. Repealed by Ga. L. 2015, p. 1084, § 1/HB 348, effective July 1, 2015.

Editor's notes. — This chapter consisted of Code Sections 34-14-1 through 34-14-8 (Article 1) and 34-14-20 through 34-14-28 (Article 2), relating to the Georgia Workforce Investment Board, and was based on Ga. L. 2010, p. 84, § 1/HB 1195; Ga. L. 2011, p. 382, § 3/HB 500; Ga. L. 2011, p. 635, § 10/HB 186; Ga. L. 2012, p. 754, § 1/HB 897; Ga. L. 2012, p. 775, § 34/HB 942; Ga. L. 2013, p. 573, §§ 1, 2/HB 393; Ga. L. 2014, p. 866, § 34/SB 340. For present comparable provisions, see Code Section 50-7-90 et seq.

Former Code Section 34-14-4 pertained to utilization of the Governor's discretionary funds. The former Code section was based on Code 1981, § 34-14-4, enacted by Ga. L. 2010, p. 84, § 1/HB 1195, and was repealed by Ga. L. 2012, p. 754, § 1/HB 897, effective July 1, 2012.

Former Code Section 34-14-5 pertained to the Georgia Work Ready Program. The former Code section was based on Code 1981, § 34-14-5, enacted by Ga. L. 2011, p. 382, § 4/HB 500, and was repealed by Ga. L. 2012, p. 754, § 1/HB 897, effective July 1, 2012.

CHAPTER 15

RESERVED

Editor's notes. — Ga. L. 2012, p. 303, §§ 1, 2/HB 1146, effective July 1, 2012, redesignated the former provisions of this chapter, relating to the transfer of the Division of Rehabilitation Services to the Department of Labor, as Chapter 9 of Title 49, and reserved the former chapter designation.

ARTICLE 1

GENERAL PROVISIONS

34-15-1 through 34-15-20. Redesignated.

ARTICLE 2

VENDING FACILITIES ON STATE PROPERTY

34-15-40 through 34-15-42. Redesignated.

APPENDIX

RULES AND REGULATIONS OF THE STATE BOARD OF WORKERS' COMPENSATION

Rule 12. Publication of Board Decisions.

The Board or its designee may publish awards and orders of the Appellate Division and the administrative law judges provided adequate security measures are taken to protect the identity and privacy of the parties. In order to protect the identity and privacy of the parties, Board decisions will be published without the names, addresses and social security numbers of the parties. The Board may redact such other information from published awards and orders as it deems appropriate.

Note as to revisions. — This rule became effective July 1, 2010.

Rule 15. Stipulated Settlements.

(a) The party submitting the stipulation shall:

(1) file the original with a copy for each party to the agreement; if filing electronically, file one original and no copies.

(2) at the top page of each stipulation list the names, addresses, and telephone numbers of all parties to the agreement, the ICMS Board claim number(s) of the employee, the dates of accident covered by the agreement where a Board file has been created by a Form WC-1 or Form WC-14, the names and addresses of all attorneys with a designation of which parties they represent, and the Federal tax identification number of the employee's attorney. For dates of accident where a Board file has not been created but covered by the stipulation, such dates of accident shall only be listed in the body of the agreement. However, if you are only settling a "Medical Only" claim, you shall create a Board file by filing a WC-14 and/or WC-1 with Section C or D completed;

(3) if a WC-1 has not previously been filed with the Board, the Board may require the attachment of a copy of the Form WC-1 with Section B, C, or D completed for each date of accident included in the caption;

(4) if an attorney fee contract has not previously been filed with the Board, attach a copy of the fee contract of counsel for the employee/claimant; and,

(5) when submitting a stipulation for approval by electronic mail, the stipulation must be submitted separately from supporting documentation.

(6) approval of a stipulation may be sent by electronic mail to the parties and attorneys of record. Whenever electronic transmission is not available, approval will be sent by mail.

(7) for all stipulations, at the top of the first page of the stipulation, the first five inches shall be left blank for the approval stamp;

(8) All stipulations shall be limited to no more than 25 pages, unless prior approval is given by the Board or the Settlement Division.

(b) A stipulation which provides for liability of the employer or insurer shall:

(1) state the legal and/or factual matters about which the parties disagree;

(2) state that all incurred medical expenses which were reasonable and necessary have been or will be paid by the employer/insurer. If the parties have agreed for medical treatment to be provided for a specific period in the future, then the stipulation must so state, and must further specify whether the agreement is limited to certain specific providers, and whether those providers may refer to others if needed. Furthermore, the stipulation shall provide that the parties will petition the Board for a change of physician in the event that a specifically named physician is unable to render services, and the parties cannot agree. If the stipulation does not contain a provision that medical expenses may be incurred for a specific period in the future after the approval of the stipulation, then the stipulation must contain a statement which explains why that provision is not necessary; and,

(3) attach the most recent medical report or summary which describes the medical condition of the employee, including a very brief statement of the surgical history, if any, if that history is not already specified within the stipulation. The entire medical record should NOT be attached.

(c) The insurer shall certify that it has complied with O.C.G.A. § 34-9-15 by having sent a copy of the proposed settlement to the employer prior to any party having signed it.

(d) When the agreement provides for the employer/insurer to fund any portion of the settlement by purchase of an annuity or other structured settlement instrument, which provides for a third party to pay such portion of the settlement, then the stipulation must contain a provision that the employer and insurer will be liable for the payments in the event of the default or failure of the third party to pay. In addition, if the stipulated settlement agreement provides for a Medicare Set-Aside (MSA), the stipulated settlement agreement shall contain a provision as to the actual or projected cost of the MSA.

(e) Unless otherwise specified in the attorney fee contract filed with the Board and in the terms of the stipulation, the proceeds of the approved stipulated settlement agreement shall be sent directly to the employee or claimant. If an attorney is to be paid, the stipulation must state the amount of the fee, and itemize all expenses which should be reimbursed. Any expense, cost, surcharge, flat fee or averaged expenditure which is not reasonable and solely related to the case being settled shall not be approved by the Board. Further, an attorney shall not receive an attorney's fee as a portion or percentage of any medical treatment or expenses, or any money designated for medical treatment or expenses. Expenses and attorney fees shall be paid in a check payable to the attorney only, and proceeds due to the employee shall be paid in a check payable to the employee only and the attorney shall

certify that the expenses comply with Rule 1.8(e) of the Georgia Rules of Professional Responsibility and Board Rule 108. No portion of any settlement payment shall be designated as medical except the amount specified in the approved stipulation.

(f) In all no-liability settlements where the claimant is represented by counsel, the attorney must submit a Form WC-15 certifying that any fee charged is fair and reasonable and does not exceed twenty five percent as allowed under the provisions of O.C.G.A. § 34-9-108 and Board Rule 108.

(g) Stipulations which contain waivers or releases of causes of action over which the Board has no jurisdiction will not be approved by the Board.

(h) The Board may hear evidence or make confidential informal inquiry regarding any settlement.

(i) When filing a motion for reconsideration on the approval or denial of a settlement, the parties or attorneys shall: (1) immediately notify the Division Director of the Settlement Division or the Board by telephone call; (2) use the ICMS doc-type labeled motion for reconsideration; (3) limit their request to 10 pages, including briefs and exhibits, unless otherwise permitted by the Board; and (4) serve a copy on all counsel and unrepresented parties, along with supporting documents, including a separate certificate of service identifying the names and addresses served.

(j) In any stipulated settlement agreement where review by the Centers for Medicare and Medicaid Services (CMS) is available, the parties elect to pursue approval of the proposed Medicare Set Aside (MSA) by CMS, and the parties elect to submit the settlement agreement to the Board for approval prior to CMS approval, the parties shall acknowledge and agree that the State Board of Workers' Compensation shall retain jurisdiction of those medical issues covered by the MSA until such time as the medical portion of the claim is resolved in accordance with the Workers' Compensation Act.

(k) No party or any party's attorney shall enter into a loan or assignment with a third party creditor which requires repayment from the proceeds of a workers' compensation claim.

(l) The employee shall stipulate that there are no outstanding child support liens that would prohibit full disbursement of the settlement funds in this case.

(m) For settlements of $5000.00 or more, the Board or any party to the settlement agreement may require that the settlement documents contain language which prorates the lump sum settlement over the life expectancy of the injured worker.

(n) Settlements in compensable claims will not be approved unless all WC-206/WC-244 party at interest issues are resolved.

(o) In all no-liability settlements, the parties shall submit a statement specifying the party responsible for outstanding medical expenses.

Note as to revisions. — The revision effective July 1, 2009, in subsection (e), inserted the third sentence and added subsection (i).

The revision effective July 1, 2010, deleted paragraph (a)(3) and redesignated former paragraphs (a)(4) through (a)(10) as present paragraphs (a)(3) through (a)(9), respectively; in subsection (d), rewrote the first sentence, and inserted "or projected" in the last sentence; substituted "non-liability" for "no-liability" in the first sentence of subsection (f); and added subsections (j) through (l).

The revision effective July 1, 2011, added the last sentence in paragraph (a)(2); substituted the present provisions of paragraph (a)(3), for the former provisions, which read: "attach a copy of the Form WC-1 for each date of accident covered by the settlement"; added "if an attorney fee contract has not previously been filed with the Board," at the beginning of paragraph (a)(4); redesignated former paragraph (a)(5) as present paragraph (b)(3); redesignated former paragraphs (a)(6) through (a)(9) as present paragraphs (a)(5) through (a)(8), respectively; and deleted the former first sentence of paragraph (f), which read: "A Form WC-1 shall be filed with every non-liability stipulation for each date of accident covered in that stipulation."

The revision effective July 1, 2012, added the last sentence to subsection (e); inserted "confidential" in subsection (h); substituted "shall stipulate" for "stipulates" in subsection (l); and added subsection (m).

The revision effective July 1, 2013, substituted "the Board may require the attachment of" for "attach" in paragraph (a)(3); deleted "including supporting documents," preceding "unless prior approval" in paragraph (a)(8); and added subsections (n) and (o).

Rule 24. Procedure for Enforcement Division to Request a Hearing.

Law reviews. — For article, "Eleventh Circuit Survey: January 1, 2013 - December 31, 3013: Article: Evidence," see 65 Emory L. J. 945 (2014).

Rule 40. Offices and Addresses of the Board; Sessions.

The offices of the State Board of Workers' Compensation are located as follows:

Atlanta:
270 Peachtree Street, N.W.
Suite 400
Atlanta, GA 30303-1299
Phone: (404) 656-3875
1-800-533-0682
www.sbwc.georgia.gov

Albany:
414 Westover Blvd.
Suite C
Albany, GA 31707

P.O. Box 71985
Albany, GA 31708

	Phone: (229) 430-4280
Columbus:	Heritage Tower, Suite 200 18 9th Street Columbus, GA 31901 Phone: (706) 649-1103
Dalton:	Suite 315 415 East Walnut Avenue Dalton, GA 30721-4406 Phone: (706) 272-2284
Gainesville:	601 Broad Street, SE Suite D Gainesville, GA 30501 Phone: (770) 531-5625
Macon:	110 Holiday Drive N. Suite A Macon, GA 31210-1802 Phone: (478) 471-2051
Savannah:	Suite 601 Seven East Congress St. Savannah, GA 31401 Phone: (912) 651-6222

The Board shall meet in Atlanta, or elsewhere as necessary, at the call of the Board.

Note as to revisions. — The revision effective July 1, 2010, rewrote the address entry for Albany, and deleted the entries for Augusta, Gainesville, and Rome.

The revision effective July 1, 2013, deleted the address entry for Covington.

The revision effective July 1, 2014, added the entry for Gainesville.

Rule 60. Adoption and Amendment of Rules of the Board; Assignment of Identification Numbers for Claimants; Form of Documents Submitted to Board; Enforcement Powers.

(a) The rules of the Board are subject to amendment at any time. The Board may adopt additional rules whenever deemed necessary. However, except in extraordinary circumstances, rule changes will only be considered and adopted annually, to be effective on July 1 of each year.

(b) Prior to the adoption, amendment, or repeal of any rule, other than interpretive rules or general statements of policy, the Board shall:

(i) Provide a copy of the proposed rule to the Chairperson of the Board's Advisory Council.

(ii) Provide a copy of the proposed rule to the Chairman of the Senate Industry and Labor Committee and the Chairman of the House Industrial Relations Committee. At the request of the Chairman of the Senate Industry and Labor Committee or the Chairman of the House Industrial Relations Committee, the Board shall hold a hearing on the proposed changes.

(c) Upon receipt of notice of a work-related injury, the Board shall assign a claim number. All subsequently filed forms, reports, or any other correspondence or documents related to or concerning such work-related injury shall have affixed thereto the assigned claim number, date of injury, and claimant's name. Failure to include this information with the filing may result in the rejection of the filing with the Board.

(d) Written instructions on all workers' compensation forms are deemed to be included in these rules.

(e) The Board shall have the power to issue writs of fieri facias in order to collect fines imposed by any member of the Board or any Administrative Law Judge against any person. Such writs may be enforced in the same manner as a similar writ issued by a superior court.

(f) Pleadings, forms, documents, or other filings shall be filed with the Board electronically through ICMS, unless otherwise authorized in these Rules. However, in the event of an outage preventing an electronic submission and the time for filing is at issue, the document may be filed in paper or by facsimile with any Board office. Any filing by facsimile transmission must be clearly labeled with the name of the claimant, claim number, and Board division or employee to whom the facsimile transmission is directed. The certificate of service, showing concurrent service upon the opposing party electronically or by facsimile transmission shall be a part of any electronic or facsimile transmission. Failure to include a certificate of service shall invalidate the filing. All facsimile transmissions must be identical to the originals and must be legible. The Board, within its discretion, may transmit documents by facsimile or electronic transmission.

(g)(1) Pursuant to Code Section 10-12-2 et seq., when a signature is required for any electronic filing with the Board, the party or attorney shall type his or her name in the appropriate fields on the document or Board form submitted for filing. Submission of a filing in this manner shall constitute evidence of legal signature by those individuals whose names appear on the filing.

(2) Any party or attorney challenging the authenticity of an electronically filed document or electronic signature on that filing must file an objection to the document within 15 days of receiving the

notice of the electronic filing. The burden shall be on the party challenging the authenticity of the signature.

(h) In order to create a workers' compensation ICMS file at the Board, a Form WC-1 or Form WC-14 shall be filed with the Board. Any document or form filed with the Board, when either a Form WC-1 or Form WC-14 has not been previously filed, shall be rejected by the Board.

(i) Only the original of any form, document, or other correspondence shall be filed with the Board. Duplicate originals shall not be filed with the Board. Where providing a courtesy copy to an Administrative Law Judge or the Board, that document shall be identified clearly and prominently as a courtesy copy.

(j) Service upon a party or attorney of any form, document, or other correspondence shall be by electronic mail. Whenever electronic mail is not available, service shall be by U.S. Mail.

Note as to revisions. — The revision effective July 1, 2010, rewrote subsection (f).

Rule 61. Publication of Notice of Operation Under the Act; Forms.

(a) All employers operating under the Georgia Workers' Compensation Law shall post notice as hereinafter provided upon durable material publicly and permanently in a conspicuous place in each business location. Upon request, the Board will furnish suitable notices free of charge. The notice shall be in such form that it can be understood by all employees and read as follows:

> This business operates under the Georgia Workers' Compensation Law.
>
> **WORKERS MUST REPORT ALL ACCIDENTS IMMEDIATELY TO THE EMPLOYER BY ADVISING THE EMPLOYER PERSONALLY, OR AN AGENT, REPRESENTATIVE, BOSS, SUPERVISOR OR FOREMAN OF THE EMPLOYER.**
>
> If the worker is hurt or injured at work, the employer/insurer shall pay medical and rehabilitation expenses within the limits of the law. In some cases, the employer will also be required to pay a part of the worker's lost wages.
>
> Work injuries and occupational diseases should be reported in writing whenever possible. The worker may lose the right to receive compensation if an accident is not reported within 30 days.

The employer will supply free of charge, upon request, a form for reporting accidents and will also furnish, free of charge, information about workers' compensation. The employer will also furnish to the employee, upon request, copies of Board forms on file with the employer pertaining to an employee's claim.

The Board may excuse lack of notice of injury if the employer does not follow the foregoing requirements for posting notice. [O.C.G.A. § 34-9-80]

(b) The Board furnishes, upon request, copies of forms required by law. Use originals of the forms or approved copies of the original forms. The text and format of a Board form may not be altered, except with the specific written permission of the Executive Director. Generally, when filing any Board form or document with the Board, file only the original and no copies. Do not use tabs to separate documents. **ANYONE USING A BOARD FORM MUST USE THE MOST CURRENTLY REVISED VERSION OF THE FORM. INSTRUCTIONS ON THE BACK OF ANY BOARD FORM SHALL BE SENT TO THE EMPLOYEE AND SHALL NOT BE FILED WITH THE BOARD.** When filing via Electronic Data Interchange (EDI), and whenever an attachment to a filing or submission is required, the employer, insurer, self-insurer, group self-insurer, or designated claims office (TPAs) shall simultaneously mail to, or electronically file with, the Board the filed Subsequent Report of Injury (SROI) or Form and a copy of such attachment. Pursuant to Board Rule 60(c), all attachments filed with the Board shall contain the employee's name, date of injury, and Board claim number. Any attachment that does not contain this information shall be rejected by the Board. Copies of all filings shall be served on the employee and the employee's attorney, if represented.

(1) **Form WC-1. Employer's First Report of Injury.** Employers shall complete Section A immediately upon knowledge of an injury and submit the form to their insurer. The insurer, self-insurer, or group self-insurer shall place their SBWC ID Number in the appropriate box on this form. Insurers who receive a Form WC-1 from an employer shall clearly stamp the date of receipt on the form. Insurers and self-insurers shall complete Section B or C and mail the original to the Board and a copy to the employee within 21 days of the employer's knowledge of disability. Use this form to report accidents and injuries for cases involving more than seven days of lost time. Cases with seven or less days of lost time should be reported on Form WC-26. For previously designated "medical only" claims, you must check the appropriate box in Section B or C. In death cases with accident dates before July 1, 1995, a copy of Form WC-1 shall also be filed with the Administrator of the Subsequent Injury Trust Fund at the same time it is mailed to the Board. In accepted catastrophic

claims, Form WC-1 shall be filed within 48 hours of the employer's acceptance of a catastrophic injury as compensable.

Complete Section B when the insurer/self-insurer commence payment of weekly benefits or when the employer continues to pay salary during compensable disability and when employer/insurer suspend for an actual return to work prior to the filing of Form WC-1. Furnish copy to employee.

The employer, insurer, self-insurer, or group self-insurer shall completely fill out the Form WC-1 and failure to provide the name and address of the employee, employer, insurer, self-insurer, or group self-insurer, date of injury, the employee's social security number, the insurer's, self-insurer's, or group/self-insurer's SBWC ID number, or the completion of sections B, C, or D may result in the rejection of the filing with the Board.

Complete Section C within 21 days in accordance with subsection (d) of O.C.G.A. § 34-9-221 when employer/insurer controverts payment of compensation. Furnish copies to employee and, upon request, to any other person with a financial interest in the claim. In addition, complete and file a Case Progress Report, Form WC-4, within 180 days of the date of claimed disability.

(2) **Form WC-2. Notice of Payment or Suspension of Benefits.** File Form WC-2 to commence, suspend, or amend the weekly benefit payment under O.C.G.A. § 34-9-261, O.C.G.A. § 34-9-262, or O.C.G.A. § 34-9-263, including payment of salary for compensability, or when a change in disability status occurs after Form WC-1 has been properly filed with the Board. File when suspending O.C.G.A. § 34-9-261 benefits and commencing O.C.G.A. § 34-9-262 benefits pursuant to § 34-9-104(a)(2). Mail a copy of the Form WC-2 and attachments, if any, to the employee and their attorney, if one has been retained. *See,* Rule 221. If the last payment is intended to close the case, file final Form WC-4 with the Board.

(3) **Form WC-2A. Notice of Payment or Suspension of Death Benefits.** Use in death case in lieu of Form WC-2. Use when change in dependency occurs. Use this form when making a payment to the State of Georgia for no dependents.

(4) **Form WC-3. Notice to Controvert.** Complete Form WC-3 to controvert when a Form WC-1 has previously been filed. Furnish copies to employee and any other person with a financial interest in the claim including, but not limited to, the treating physician(s) and attorney(s) in the claim. *See* subsections (d), (h), and (i) of O.C.G.A. § 34-9-221 and Rule 221. In addition, complete and file a Form WC-4 within 180 days of the date of the controvert.

(5) **Form WC-4. Case Progress Report.** File as follows:

(A) In both controverted and accepted claims, within one year of the first date of disability;

(B) Within 30 days from last payment for closure;

(C) Upon request of the Board;

(D) Every 12 months from the date of the last filing of a Form WC-4 on all open cases;

(E) To reopen a case;

(F) Within 30 days of final payment made pursuant to an approved stipulated settlement;

(G) Within 90 days of receipt of an open case by the new third party administrator.

(6) **Form WC-6. Wage Statement.** File when the weekly benefit is less than the maximum under O.C.G.A. § 34-9-261 or § 34-9-262 and furnish a copy to the employee. If a party makes a written request of the employer/insurer, then the employer shall send the requesting party a copy of the Form WC-6 within 30 days.

(7) **Form WC-10. Notice to Elect or Reject Coverage.** A sole proprietor or partner must file this form to elect coverage under the provisions of O.C.G.A. § 34-9-2.2.

The employer must file this form in order that the corporate officer or limited liability company member be exempt from coverage, or to revoke their previously filed exemption. Rejection becomes effective the date of filing with the insurer. Where the employer has workers' compensation insurance coverage, the employer must send this form to their workers' compensation insurer. If no workers' compensation coverage is in place, file this form with the Board.

The farm labor employer must file this form in order to request coverage for farm laborers, or to revoke their previously filed request.

(8) **Form WC-11. Standard Coverage Form.**

(9) **Form WC-12. Request for Copy of Board Records.** Any party requesting a copy of Board records shall file their request on this form. The Board's file will include any document or form submitted by the parties to a claim or any document transmitted by the Board. Any party who receives a copy of a Board record pursuant to their request shall pay the charges due within 30 days of receipt of an invoice from the Board.

(10) **Form WC-14. Notice of Claim/Request for Hearing or Mediation.** File to open a claim, request a hearing, or request a mediation conference. Furnish a copy of Form WC-14 to all other

parties. (A request for hearing by an employee will be considered only after the time required of the employer/insurer to make the first payment of income benefits has expired as provided in O.C.G.A. § 34-9-221.) The employee must furnish a social security number if available, otherwise the Board will assign a tracking number.

(11) **Form WC-14A. Request to Change Information on a Previously Filed Form WC-14.** A party or attorney shall file this form with the Board when requesting correction of a mistake concerning the employee's name, social security number, date of injury, or county of injury on a previously filed Form WC-14. **A Form WC-14A shall not be used to change an address of record, add additional parties, or additional dates of injury.** A new Form WC-14 shall be filed with the Board to add or amend any information pertaining to the employer, the insurer, the servicing agent or part of body injured, and to add an additional date of injury, hearing issue, or mediation issue.

(12) **Form WC-15. Attorney Certification for No-Liability Stipulated Settlements.** Must be attached to all no-liability stipulated settlements.

(13) **Form WC-20(a). Medical Report.** This report and/or the 1500 Claim Form, and/or UB04 shall be completed and filed as follows:

(A) The attending physician or other practitioner makes the report and forwards it along with office notes and other narratives to the employer/insurer as follows:

(i) Within seven days of initial treatment;

(ii) Upon the employee's discharge by the attending physician;

(iii) At least every three months until the employee is discharged;

(iv) Upon the employee's release to return to work;

(v) When a permanent partial disability rating is determined.

(vi) Pursuant to Rule 203(b).

(B) The employer/insurer shall file the report including office notes and narratives with the Board within 10 days after receipt as follows:

(i) When the report contains a permanent partial disability rating;

(ii) Upon request of the Board; and,

(iii) To comply with other rules and regulations of the Board.

(C) The employer/insurer shall maintain copies of all medical reports and attachments in their files and shall not file medical reports except in compliance with this rule and Rule 200(c).

(14) **Form WC-24. Enforcement Division Request for Board Intervention.** For use by Enforcement Division only.

(15) **Form WC-25. Application for Lump Sum/Advance Payment.** See Board Rule 222.

(16) **Form WC-26. Consolidated Yearly Report of Medical Only Claims and Annual Payments on Indemnity Claims.** File on or before March 1st following each calendar year in respect to all medical and indemnity payments for the previous year for work-related injuries. File annually even if no reportable payment occurred during the reporting year.

(17) **Form WC-100. Request for Settlement Mediation.** To be used when a party is requesting a settlement mediation.

(18) **Form WC-102. Request for Documents from Parties.** Prior or subsequent to a hearing being requested in a claim, the parties shall be entitled to request copies of documents listed in this form from the opposing parties, and the named documents shall be provided to the requesting party within 30 days of the date of certificate of service, subject to penalties for failure to comply.

(19) **Form WC-102B. Notice of Representation by an attorney for an employer, insurer, or party-at-interest.** A claimant's attorney shall file a notice of representation by filing their attorney fee contract in compliance with Board Rule 108.

(20) **Form WC-102C. Attorney Leave of Absence.** An attorney who is counsel of record, and wishes to obtain a Leave of Absence, must file this form with the Atlanta office of the Board. If granted, the leave will cover all cases for which the attorney is counsel of record which are not calendared on the date of approval.

(21) **Form WC-102D. Motion/Objection to Motion.** A party who makes or objects to a motion shall use this form, if no other specific Board form exists for the motion or request, and shall serve a copy on all counsel and unrepresented parties.

(22) **Form WC-104. Notice to Employee of Medical Release to Return to Work with Restrictions or Limitations.** For non-catastrophic accidents occurring on or after July 1, 1992, the employer/insurer shall send this form to the employee no later than 60 days after the medical release of the employee to return to work with restrictions or limitations.

(23) **Form WC-108a. Attorney Fee Approval.** An attorney shall file this form in order to request approval of a fee contract, an

assessed fee by consent, and for resolution of a fee lien dispute by consent, when there is no pending litigation, and shall serve a copy on all counsel and unrepresented parties.

(24) **Form WC-108b. Attorney Withdrawal/Attorney Fee Lien.** An attorney who wishes to withdraw must file this form and follow the procedure set out in Rule 108(b). An attorney of record who chooses to file a lien for services and/or request for reimbursement of expenses after withdrawal from representation or after services are terminated, in writing, by a client, shall file this form with supporting documentation, and serve a copy on all counsel and unrepresented parties.

(25) **Form WC-121. Change of TPA Claims Office/Servicing Agent.** An insurer, self-insurer, or self-insurance fund shall file this form to give: (1) notice of the employment of a claims office; (2) change an address of a claims office; (3) add additional claims offices; and (4) notice of the termination of services of a claims office.

(26) **Form WC-131. Permit to Write Insurance.** Insurers shall complete this form and file it with the Board to receive a permit to write workers' compensation insurance in the state of Georgia.

(27) **Form WC-131(a). Permit to Write Insurance Update.** Insurers shall complete this form annually and file it with the Board when updating a permit to write workers' compensation insurance in the state of Georgia.

(28) **Form WC-200a. Change of Physician/Additional Treatment by Consent.** Parties who agree on a change of physician/additional treatment shall file a properly executed Form WC-200a with the Board, with copies provided to the named medical provider(s) and parties to the claim, which form shall be deemed to be approved and made the order of the Board pursuant to O.C.G.A. § 34-9-200(b) unless otherwise ordered by the Board. A Form WC-200a shall be rejected by the Board if a Form WC-1 or WC-14 has not been previously filed by any party or attorney creating a Board claim.

(29) **Form WC-200b. Request/Objection for Change of Physician/Additional Treatment.** A party who requests a change of physician or additional treatment without consent, or who objects to a request which has been made, shall file this form with the Board, and serve a copy on all counsel and unrepresented parties. Objections must be filed within 15 days of the date on the certificate of service on the request.

(30) **Form WC-205. Request for Authorization of Treatment or Testing by Authorized Medical Provider.** Authorized medical

providers seeking approval for treatment or testing shall send this form by facsimile or e-mail directly to the insurer/self-insurer who must fax or e-mail a response within five business days. Neither the request nor response shall be filed with the Board, unless otherwise requested.

(31) **Form WC-206. Reimbursement Request of Group Health Insurance Carrier/Healthcare Provider.** A group health insurance carrier or health care provider which requests reimbursement of medical expenses shall file this form during the pendency of a claim, and serve a copy on all counsel and unrepresented parties.

(32) **Form WC-207. Authorization and Consent to Release Information.** Employer/insurers seeking the release of medical information pursuant to O.C.G.A. § 34-9-207 may utilize this form to receive consent from the employee.

(33) **Form WC-208a. Application for certification of WC/MCO.**

(34) **Form WC-226(a). Petition for Appointment of Temporary Conservatorship of Minor.** A party petitioning for the Board to appoint a temporary conservator to receive and administer workers' compensation benefits for a minor may file this form with the WC-14 or when submitting a settlement agreement and shall serve a copy on all counsel and unrepresented parties.

(35) **Form WC-226(b). Petition for Appointment of Temporary Conservatorship of Legally Incapacitated Adult.** A party petitioning for the Board to appoint a temporary conservator to receive and administer workers' compensation benefits for a legally incapacitated adult may file this form with the WC-14 or when submitting a settlement agreement and shall serve a copy on all counsel and unrepresented parties.

(36) **Form WC-240. Notice to Employee of Offer of Suitable Employment.** The employer/insurer shall use this form to notify an employee of an offer of employment which is suitable to his/her impaired condition as required by O.C.G.A. § 34-9-240, and shall provide it to the employee and his/her attorney at least 10 days prior to the date the employee is scheduled to return to work. File this form as an attachment to a Form WC-2 when unilaterally suspending income benefits under Board Rule 240.

(37) **Form WC-240A. Job Analysis.** An employer/insurer may use this form in conjunction with a Form WC-240 to provide a detailed job description when notifying an employee of an offer of employment which is suitable to his/her impaired condition as required by O.C.G.A. § 34-9-240, and shall provide it to the employee

and his/her attorney at least 10 days prior to the date the employee is scheduled to return to work. Attach this form with a Form WC-240, and file it with the Form WC-240 as an attachment to a Form WC-2 when unilaterally suspending income benefits under Board Rule 240.

(38) **Form WC-243. Credit.** An employer/insurer seeking a credit pursuant to O.C.G.A. § 34-9-243 shall file this with the Board and send a copy to all counsel and unrepresented parties. The employer/insurer must specify the amount of unemployment compensation and/or income payments made to the employee pursuant to a disability plan, a wage continuation plan, or a disability insurance policy, and shall specify the ratio of the employer's contributions to the total contributions of such plan or policy.

(39) **Form WC-244. Reimbursement Request of Group Insurance Carrier/Disability Benefits Provider.** A group insurance carrier or disability benefits provider which requests reimbursement of disability benefits shall file this form during the pendency of a claim, and serve a copy on all counsel and unrepresented parties.

(40) **Form WC-262. Payment of Temporary Partial Disability Income Benefits.** Upon payment of any temporary partial disability income benefits under O.C.G.A. § 34-9-262 to an employee based on an actual return to work, an employer shall file this form with the Board and send a copy to the employee and counsel, if represented.

(41) **Form WC-Change of Address. Change of Address.** This form is to be used only to change certain addresses of record. For employees, this form only changes the employee's address in a specifically identified claim. For employers and attorneys, this form only needs to be filed once as this form will change information permanently in every claim. Do not file this form if a party's address is correct, but improperly listed in a claim.

(42) **Form WC-R1. Request for Rehabilitation.** The employer/insurer shall file:

(A) Within 48 hours of the employer's acceptance of a catastrophic injury as compensable, simultaneously with the Form WC-1, naming a catastrophic supplier;

(B) Within 15 days of notification that rehabilitation is required to request a rehabilitation supplier;

(C) When the employer/insurer requests a supplier for cases with dates of injury prior to July 1, 1992;

(D) When the employer/insurer requests a change of supplier;

(E) To request reopening of rehabilitation; or

(F) Upon request of the Board.

The employee or employee's attorney shall file a Form WC-R1 to request appointment of a supplier for cases with dates of injury prior to July 1, 1992, for change of supplier or reopening of rehabilitation.

A case party shall file a Form WC-R1 when a stipulated settlement provides for rehabilitation and rehabilitation is not already on the case. A case party may file a Form WC-R1 to request an extension of vocational rehabilitation services for cases with dates of injury prior to July 1, 1992.

All required information shall be supplied and shall be legible. The certificate of service must be completed and the date mailed must be indicated.

(43) **Form WC-R1CATEE. Employee Request for Catastrophic Designation.** The employee or employee's attorney shall file:

(A) If the employer/insurer fail to timely designate the claim catastrophic and the employee believes the case to qualify for catastrophic designation;

(B) With supporting documentation;

(C) Presenting a choice for a Board Certified catastrophic rehabilitation supplier.

(44) **Form WC-R2. Rehabilitation Transmittal Report.**

The principal rehabilitation supplier shall file:

(A) To accompany updated narrative progress reports on catastrophic cases every 90 days;

(B) To request a rehabilitation conference or prepare for a rehabilitation conference;

(C) With all progress reports as required by the Board not submitted with a Form WC-R2A and when a stipulation request has been submitted;

(D) Upon request of the Board;

(E) To report medical care coordination services for non-catastrophic cases with dates of injury prior to July 1, 1992.

(45) **Form WC-R2A. Individualized Rehabilitation Plan.** The principal rehabilitation supplier shall file within 60 calendar days from the date of appointment; not later than 30 calendar days prior to the end of the current rehabilitation period to request extension of

services, or to amend an approved plan 30 calendar days prior to the date of plan expiration.

(46) **Form WC-R3. Request for Rehabilitation Closure.** The principal rehabilitation supplier shall file this form, accompanied by a closure report and any necessary documentation:

(A) Following 60 days of return to work status;

(B) When further services are not needed or feasible;

(C) When a stipulated settlement has been approved by the Board that does not include further rehabilitation services; or

(D) When the Board has closed the case.

Any party may file to request closure of rehabilitation accompanied by documentation supporting the request.

(47) **Form WC-R5. Request for Rehabilitation Conference.** Any party or principal rehabilitation supplier may file to request a rehabilitation conference.

(48) **Form WC-Rehabilitation Registration Application. Application to be a licensed rehabilitation supplier.** File this form with the Board to be a certified rehabilitation supplier in the state of Georgia.

(49) **Form WC-Rehabilitation Registration Application Renewal. Application to renew certification for a licensed rehabilitation supplier.** File this form annually with the Board to renew certified rehabilitation supplier status in the state of Georgia.

(50) **Form WC-Catastrophic Rehab Release.**

(51) **Form Rehab Obj.** Any party who has an objection to any issue related to rehabilitation services must timely file this form with supporting documentation attached. Timely filing is within 20 days of the certificate of service of a WC-R1; WC-R1CATEE; WC-R2; WC-R2A; or WC-R3.

(52) **Form WC-P1. Panel of Physicians.** *See* **Board Rule 201.**

(53) **Form WC-P2. Conformed Panel of Physicians.** *See* **Board Rule 201.**

(54) **Form WC-P3. WC/MCO Panel.** To be utilized only by employers/insurers contracted with a Board Certified Managed Care Organization. *See* Board Rule 201

(55) **Form WC-Bill of Rights. Bill of Rights.** Use and post with the panel of physicians (Form WC-P1, Form WC-P2, or WC-Form P3). See O.C.G.A. § 34-9-81.1 & Board Rule 81.1.

(56) **Form WC-Subpoena.** Use this form for hearings. Do not file subpoenas with the Board. Subpoenas shall be produced at the hearing or attached to a motion only when enforcement or a postponement is at issue.

(57) Any party or attorney filing a form with the Board shall use the most current version of the form. In addition, no party or attorney shall submit any form that has been discontinued or altered. A violation of this rule may result in the rejection of the filing with the Board, and/or the imposition of a civil penalty under O.C.G.A. § 34-9-18.

(58) When electronically filing any form with the Board, and when required by Statute, Rule, or form to serve a copy on an opposing attorney or party, a copy of the form or the ICMS equivalent of the form filed may be used for service.

(59) Service upon a party or attorney of any form, document, or other correspondence shall be by electronic mail. Whenever electronic mail is not available, service shall be by U.S. Mail.

(60) All forms, documents, or other correspondence should be filed electronically through ICMS web submission or EDI, if available.

(61) No party or attorney shall use the ICMS doc-type "Misc" when requesting any action by the Board. This doc-type shall only be used when no action is being requested.

(62) A pro-se party must file correspondence, documents or forms in paper with any Board office. A document may be filed via facsimile transmission. Any filing by facsimile transmission must be clearly labeled with the name of the claimant, claim number, and Board division or employee to whom the facsimile transmission is directed.

Note as to revisions. — The revision effective July 1, 2009, in subsection (b), added the last three sentences in the introductory paragraph, in paragraph (b)(9), added the second sentence, in paragraph (b)(16), substituted "March 1st" for "January 31", added paragraph (b)(55), redesignated former paragraphs (b)(55) through (b)(59) as present paragraphs (b)(56) through (b)(60), respectively, and added paragraph (61).

The revision effective July 1, 2010, in subparagaraph (b)(5)(A), substituted "one year" for "180 days"; added the last sentence in paragraph (b)(10); substituted "and/or UB04" for "HCFA 1450, and/or UB92" in the introductory language of paragraph (b)(13); inserted "based on an actual return to work" in paragraph (b)(40); and, in paragraph (b)(61), deleted ", only with the prior express permission of the Board" at the end of the second sentence, and added the third sentence.

The revision effective July 1, 2014, substituted "1500 Claim Form" for "HCFA 1500" in paragraph (b)(13); substituted "Conservatorship" for "Guardianship" and substituted "conservator" for "guardian" in paragraphs (b)(34) and (b)(35); added paragraph (b)(51); and redesignated former paragraphs (b)(51) through (b)(61) as present paragraphs (b)(52) through (b)(62), respectively.

Rule 62. Electronic Date Interchange (EDI).

(1) Filing with the Board:

(a) Prior to filing in EDI, insurers, self-insurers, group self-insurers, and designated claims offices (TPAs) shall be certified to file via EDI by the Board.

(b) Insurers, self-insurers, group self-insurers, designated claims offices (TPAs) or their designated vendors shall file Forms WC-1, WC-2, WC-2a, WC-3 and WC-4 via EDI in form of FROIs (First Report of Injury) and SROIs (Subsequent Report of Injury).

(c) Insurers, self-insurers, group self-insurers, and designated claims offices (TPAs) shall not file any document or submit any transmission via EDI in any claim created prior to July 1, 2009. For any claim created prior to July 1, 2009, insurers, self-insurers, group self-insurers or designated claims offices (TPAs) shall file documents in paper unless and until web filing is available. Upon approval of the Board, claims created prior to July 1, 2009, may be converted to EDI.

(d) Any Form WC-1, WC-2, WC-2a, WC-3, or WC-4 that is filed in paper, by an insurer, self-insurer, group self-insurer, or designated claims office (TPA) concerning any claim created on or after July 1, 2009 may be rejected by the Board and may subject the filing party to a penalty.

(e) When suspending benefits via EDI and an attachment to a filing or submission is required such as a medical report. WC-104 or WC-240, the employer, insurer, self-insurer, group self-insurer or designated claims office (TPA) shall mail to, or electronically file with the Board the required attachment prior to or simultaneously with the filing of the appropriate EDI SROI suspension. Pursuant to Board Rule 60(c), all attachments filed with the Board shall contain the employee's name, date of injury, and Board claim number. Any attachment that does not contain this information shall be rejected by the Board. Copies of all filings shall be served simultaneously on the employee and the employee's attorney, if represented.

(2) Changes in Handling of Claims:

If an insurer, self-insurer, group self-insurer or designated claims office (TPA) adds, replaces, or terminates the services of a claims office, the trading partner agreement shall be immediately amended and updated, and a Form WC-121 shall be filed with the Board.

(3) Compliance:

If an insurer, self-insurer, group self-insurer, designated claims office (TPA), or their designated vendor files Form WC-1, WC-2, WC2a, WC-3,

or WC-4 via EDI, then all subsequent FROIs (First Report of Injury) and SROIs (Subsequent Report of Injury) shall be filed via EDI. Failure to do so may subject the filing party to a penalty.

(4) Exceptions:

Upon request, or on its own, the Board, in its discretion, may grant exceptions to this rule.

Note as to revisions. — This rule was added effective July 1, 2009.

The revision effective July 1, 2011, added the last sentence in paragraph (1)(c); added "and may subject the filing party to a penalty" at the end of paragraph (1)(d); in paragraph (1)(e), substituted the first sentence for the former provisions, which read: "When filing via EDI, and whenever an attachment to a filing or submission is required, the employer, insurer, self-insurer, group self-insurer or designated claims office (TPA) shall simultaneously mail to, or electronically file with, the Board the filed Subsequent Report of Injury (SROI) or Form and a copy of such attachment." and inserted "simultaneously" in the last sentence; and rewrote paragraph (e)(3).

Rule 82. Statute of Limitation and Procedure for Filing Claims.

(a) Any defense as to the time of filing a claim is waived unless it is made no later than the first hearing.

(b) A party filing a claim should file Form WC-14 with the Board and serve a copy on all other parties.

(c) A claim shall be filed electronically through ICMS. However, in the event of an outage preventing an electronic submission and the time for filing a claim is at issue, a claim may be filed in paper or by facsimile with any Board office. Any filing by facsimile transmission must be clearly labeled with the name of the claimant, claim number, and Board division or employee to whom the facsimile transmission is directed.

Note as to revisions. — The revision effective July 1, 2009, added subsection (c).

The revision effective July 1, 2010, in subsection (c), deleted ", only with the prior express permission of the Board" following "Board office" at the end of the second sentence, and added the last sentence.

Rule 84. [Payment of loans or assignments to third party creditors.]

No party to a claim or any party's attorney shall assist, secure, create, or execute any loan or assignment with a third party creditor which requires repayment out of any recovery, settlement, or payment of benefits from any claim filed under this chapter.

Editor's notes. — The catchline was added by the publisher in 2010 since this rule was adopted without one.

Note as to revisions. — This rule was added effective July 1, 2010.

Rule 102. Attorneys Entitled to Practice Before the Board; Reporting Requirements; Postponements, Leave of Absence, and Legal Conflicts; Conduct of Hearings; Motions and Interlocutory Orders; Discovery and Submission of Evidence; Written Responses.

(A) **Practice of Law.**

(1) **Attorneys Entitled to Practice before the Board:** The Rules and Regulations for the Organization and Government of the State Bar of Georgia, as now in effect or as hereinafter amended, are controlling as to the practice of law before the Board and its Administrative Law Judges.

(2) Any ex parte communication, including electronic mail, with an Administrative Law Judge or the Board in a pending claim is prohibited.

(3) Attorneys, not licensed in the State of Georgia, shall comply with Uniform Rule of Superior Court 4.4 addressing Admission Pro Hac Vice.

(4) On all filings with the Board, attorneys shall place their Georgia bar number. In addition, no attorney shall submit any form that has been discontinued or altered. A violation of this rule may result in the rejection of the filing with the Board, and/or the imposition of a civil penalty under O.C.G.A. § 34-9-18.

(5) Service upon a party or attorney of any form, document, or other correspondence shall be by electronic mail. Whenever electronic mail is not available, service shall be by U.S. Mail.

(6) **Unauthorized recording of conference calls and other court proceedings.** No party shall make any audio, video, photographic, electronic recording or court transcription of a Board proceeding, including any conference call with an Administrative Law Judge, unless expressly permitted by the Board. Any such request must be submitted to the Board at least 24 hours prior to the proceeding or conference call with notice to all parties. This Rule does not apply to an official function of a law enforcement agency, the State Bar of Georgia, or the Judicial Qualifications Commission.

(B) **Reporting Requirements:**

(1) The address of record of an employee shall be that address shown on the most recent document filed with the Board.

(2) A party shall provide notice to the Board of the intent to obtain legal representation and the name of its legal representative, if any, within 21 days from the date of the hearing notice, subject to an assessment of penalties for failure to comply.

(3) The address of record of an employer shall be the address shown on the Form WC-1, the address on file with a Licensed Rating Organization filed by the insurer on behalf of the employer, or the principal office of the employer within the State of Georgia.

(4) Any party requesting a hearing shall furnish the correct name and current address of the employee, the employer, and the insurer/self insurer and third party administrator at the time the hearing is requested.

(5) An attorney who represents a party other than an employee or a claimant in a contested matter must file a notice of representation on a Form WC-102B with the Board, and must serve a copy on all counsel and unrepresented parties.

(6) An attorney who represents an employee or claimant in a contested matter shall file a fee contract as notice of representation and must serve a copy on all counsel and unrepresented parties. The contract must be dated, conform to Rule 108, and both the attorney and the client must sign the contract.

(C) **Postponements, Leaves of Absence, and Legal Conflicts:**

(1)(a) Postponement: If a hearing is on a calendar for the first time, and if all parties agree to postpone it to be rescheduled, they may obtain the postponement without consulting the Administrative Law Judge before whom it is scheduled, absent prior specific instructions from the judge to the contrary. This agreement must be communicated to the judge no later than 2:00 p.m. of the business day immediately preceding the hearing by the party who requested the hearing, or by any other party by agreement. Otherwise and generally, a hearing shall be postponed only upon strict legal grounds, or at the discretion of the Board or an Administrative Law Judge. For a case that has already been postponed, a second or subsequent request by counsel to postpone the case from a calendar must be made no later than 2:00 p.m. on the business day immediately before the scheduled hearing, and the request must be approved by the Administrative Law Judge. For a case to be removed from the calendar with no reset, this notification, as with a postponement request, must be made no later than 2:00 p.m. on the business day immediately before the scheduled hearing. If the judge determines that the case is not ready for trial at this time, the claim may be removed from the calendar, not to be reset until the parties certify that discovery is complete and the case is ready to be tried.

(b) Whenever the pending hearing issues resolve or a case settles prior to a scheduled hearing date, the parties or attorneys shall immediately notify the Board or assigned Administrative Law Judge: (1) first, by telephone call; and (2) if so instructed by the Trial Division, by subsequent written or electronic confirmation.

(c) Any party or attorney who fails to follow the cancellation, postponement, or rescheduling procedures as outlined above in sections (C)(1)(a) & (b), and who is unable to show good cause for such failure, may be subject to civil penalties, assessed attorney's fees, and/or costs, including but not limited to the cost of the court reporter.

(2) Leave of Absence. In the event that an attorney wishes to obtain a leave of absence from the Board, the request should be submitted on a Form WC-102C and mailed to the Atlanta office of the State Board of Workers' Compensation or filed on-line via ICMS. The granting of a leave of absence will not apply to cases already calendared on the date the leave is signed, and will apply only to court appearances and mediations. In the event that leave is requested for a date already calendared, the attorney must request a postponement from the Administrative Law Judge, with permission of opposing counsel or by conference call, prior to the hearing or mediation.

(3) For the purpose of resolving requests for continuance based upon legal conflict, Rule 17.1(B)(4) of the Uniform Rules of the Superior Courts shall apply. A conflict letter shall be served upon opposing counsel and unrepresented parties no later than seven days prior to the date of conflict but shall not be filed with the Board unless or until such conflict letter is requested by an Administrative Law Judge or the Board. The action which was first filed shall take precedence, subject to judicial discretion.

(D) **Motions and Interlocutory Orders Pending a Hearing:**

(1)(a) All motions and objections shall be made on Form WC-102D, with the exceptions of motion for reconsideration and request for a change of physician/additional medical treatment under Board Rule 200(b)(1). Motions and objections, including briefs and exhibits, shall be limited to 50 pages, unless otherwise approved by an Administrative Law Judge or the Board. When attaching documents as evidence to motions and objections, do not use tabs to separate documents. Any party or attorney filing a motion or objection shall also serve a copy on all counsel and unrepresented parties, along with supporting documents, including a separate certificate of service identifying the names and addresses served.

(b) When filing a motion for reconsideration, the parties or attorneys shall: (1) immediately notify the Board or assigned

Administrative Law Judge by telephone call; (2) use the ICMS doc-type labeled motion for reconsideration; (3) limit their motion to 20 pages, including briefs and exhibits, unless otherwise permitted by the Board or an Administrative Law Judge; and (4) serve a copy on all counsel and unrepresented parties, along with supporting documents, including a separate certificate of service identifying the names and addresses served.

(2) Prior to filing a motion, including requests for documents made pursuant to Rule 102(F)(1), the moving party shall confer with the opposing party, or counsel if the party is represented, in a good-faith effort to resolve the matters involved.

(3) A party objecting to a motion shall respond on a Form WC-102D, which must be filed with the Board within 15 days of the date of the certificate of service on the request, and shall serve a copy on all counsel and unrepresented parties.

(4) Whenever the pending issues resolve in whole or in part, or at any time that a ruling on the motion is no longer necessary or desired, the parties or attorneys shall immediately notify the Board or assigned Administrative Law Judge: (1) first, by telephone call; and (2) if so instructed, by subsequent written or electronic confirmation. Any party or attorney who fails to follow this procedure, and who is unable to show good cause for such failure, may be subject to civil penalties and/or assessed attorney's fees.

(5) An Administrative Law Judge may issue an interlocutory order suspending or reinstating payment of weekly benefits to an employee pending an evidentiary hearing.

(6) Where the issue is which of two or more employer/insurers is liable, the Administrative Law Judge or the Board may issue an interlocutory order directing the employer or one of the insurers to pay weekly benefits and medical expenses until the determination of liability of an insurer has been made. Reimbursement may thereafter be ordered where appropriate.

(E) **Conduct of Hearings:**

(1) No person shall, during the course of a proceeding before an Administrative Law Judge or Director, engage in any discourteous or disruptive conduct.

(2) Any violation of the Georgia Rules of Professional Conduct of the State Bar of Georgia may subject an attorney to the assessment of a civil penalty pursuant to O.C.G.A. § 34-9-18 and referral to the State Bar of Georgia for disciplinary action.

(3)(a) Prior to the commencement of a hearing, the parties shall consolidate any and all records, including but not limited to

medical records, and any other documentary evidence to be admitted at a hearing in order to avoid any repetition and duplication.

(b) All medical evidence regarding the treatment, testing or evaluation of the claimant for the accident which is the subject of the hearing should be exchanged between the parties as soon as practicable, but no later than ten days prior to the hearing, and all depositions should be completed prior to the hearing. Failure to exchange such evidence within ten days of a hearing may, in the discretion of the Administrative Law Judge or the Board, result in: (1) the imposition of civil penalties, (2) award of assessed attorney fees, (3) a continuance, (4) award of costs, (5) award of witnesses fees and expenses, and/or (6) in limited circumstances, the exclusion of evidence at the hearing.

(c) If the amount of the average weekly wage is in dispute, counsel shall exchange written contentions with respect to their methods of calculation at least ten days prior to the hearing, and shall present the written contentions to the Administrative Law Judge at the commencement of the hearing.

(d) If accompanied by an affidavit, a written laboratory test result report is admissible into evidence for purposes of authenticity only. Any other evidentiary objections can be raised by the parties in motions or at evidentiary hearings.

(e) Any challenge to the testimony of an expert under O.C.G.A. § 24-9-67.1 (24-7-702 effective 1/1/13) shall be made not later than 15 days prior to the hearing. Failure to raise a timely challenge shall result in waiver of the challenge unless otherwise agreed to by the attorneys and the Administrative Law Judge.

(4) Parties may be allowed to make arguments either by the filing of briefs within the time set by the Administrative Law Judge at the hearing, by oral argument at the conclusion of the presentation of evidence at the hearing, or both. Oral argument shall be limited to five minutes for each party. Briefs shall be limited to 30 pages, unless otherwise approved by an administrative law judge or the Board.

(5) It is the policy of the Board to encourage the parties to close the record at the conclusion of the hearing. The parties are expected to make diligent efforts to present all the evidence at the hearing, without the need for the record to remain open.

(6) Hearing Transcript: Any Administrative Law Judge is authorized to relieve the court reporter of the duty of transcribing the record of proceedings. The record shall be transcribed and submitted to the Board or the superior court if there is an application for review of an appeal. The appellant shall serve a copy of the application for

review or appeal on the court reporter at the same time it is served on all other persons.

(7) Notices of hearing may be sent by electronic mail to the parties and attorneys of record. Whenever electronic transmission is not available, a notice of hearing will be sent by U.S. Mail.

(8) The usage and enforcement of subpoenas shall be governed by O.C.G.A. § 24-10-1 et seq. (24-13-1 effective 1/1/13), except subpoenas shall not be filed with the Board. Subpoenas shall be produced at the hearing or attached to a motion only when enforcement or a postponement is at issue.

(F) **Discovery and Submission of Evidence:**

(1) Prior or subsequent to a request for hearing being filed in a claim, the parties shall be entitled to receive from each other without cost the documents specified in Form WC-102. These documents shall be provided within 30 days of the date of the certificate of service. Neither the request nor response shall be filed with the Board. Any party or attorney who fails to follow this procedure, and who is unable to show good cause for such failure, may be subject to civil penalties and/or assessed attorney's fees.

(2) Discovery conducted pursuant to the Civil Practice Act shall only be permitted after a hearing has been requested in the claim, or as otherwise specified in these rules, or by agreement of the attorneys or permitted by an Administrative Law Judge or the Board.

(3) Discovery documents, including but not limited to depositions, interrogatories, and notices to produce, shall not be filed with the Board until such time as they are tendered in evidence in a proceeding before the Board. Correspondence between the parties shall not be filed with the Board.

(4) All documents, transcripts, exhibits, and other papers filed with the State Board of Workers' Compensation shall be submitted on 8-½ by 11 inch paper only. Sufficient space shall be left at the top of all documents (at least one and one-half inches) so that all information will remain readable after the documents have been filed. Copies of items offered in evidence at a hearing must be properly identified and tendered to opposing parties at the hearing. When submitting any documents as evidence, do not use tabs to separate documents.

(G) **Written Responses:** The filing of all written responses will be governed in accordance with O.C.G.A. § 9-11-6(e).

Note as to revisions. — The revision effective July 1, 2009, in paragraph (A)(2), substituted "Administrative Law Judge or the Board" for "administrative law judge"; added paragraph (E)(8); and in paragraph (F)(2), substituted "conducted" for "file" near the beginning, and added ", or by agreement of the attorneys or permitted

by an Administrative Law Judge or the Board" at the end.

The revision effective July 1, 2011, substituted "2:00 p.m." for "4:30 p.m." three times in subparagraph (C)(1)(a).

The revision effective July 1, 2012, in paragraph (D)(4), substituted "or at any time that a ruling on the motion is no longer necessary or desired," for "part, in a motion," and made a minor punctuation change; inserted "(24-7-702 effective 1/1/13)" in subparagraph (E)(3)(e); and inserted "(24-13-1 effective 1/1/13)" in subparagraph (E)(8).

The revision effective July 1, 2014, in paragraph (A)(1), substituted "The Rules" for "Rule 1-203 of the Rules" and substituted "are controlling" for "is controlling"; and, in paragraph (F)(1), deleted ", subject to an assessment of penalties for failure to comply" at the end of the second sentence, and added the last sentence.

The revision effective July 1, 2015, added paragraph (A)(6).

Rule 102.1. Practice of Law before the Board.

(a) Attorneys in good standing admitted to practice in the State of Georgia, shall file, sign, and verify documents only by electronic means via ICMS. Only an electronic submission of documents via ICMS shall constitute filing, except as provided for in sections (i) and (j) or as otherwise provided in the Board Rules.

(b) Pro se litigants who are not attorneys in good standing with the State Bar of Georgia must file all documents with the Board in paper form with any Board office.

(c) The electronic filing of any document, form, or other correspondence by an attorney who is a registered participant in ICMS shall constitute the signature of that attorney under Board Rule 60(g) and O.C.G.A. § 10-12-2 et seq. The attorney whose login and password are used to accomplish an electronic filing certifies that the attorney and the attorney's law firm have authorized the filing.

(d) No attorney shall knowingly permit or cause to permit his/her login or password to be used by anyone other than an authorized employee of his/her law firm.

(e) No person shall knowingly use or cause another person to use the login or password of a registered attorney unless such person is an authorized employee of the law firm.

(f) Only the original of any form, document, or other correspondence shall be electronically filed with the Board. Duplicate originals shall not be filed with the Board. Where providing a courtesy copy in response to a request from an Administrative Law Judge or the Board, that document shall be identified clearly and prominently as a courtesy copy.

(g) When electronically filing any form with the Board, and when required by Statute, Rule, or form to serve a copy on an opposing attorney or party, a copy of the form or the ICMS equivalent of the form filed may be used for service.

(h) Service upon a party or attorney of any form, document, or other correspondence shall be by electronic mail. Whenever electronic mail is not available, service shall be by U.S. Mail.

(i) ICMS will be available during the Board's business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, except state holidays. Known systems outages will be posted on the web site, and communicated by email, if possible. In the event of an outage preventing an electronic submission and the time for filing a document is at issue, the document may be filed in paper or by facsimile with any Board office. Any filing by facsimile transmission must be clearly labeled with the name of the claimant, claim number, and Board division or employee to whom the facsimile transmission is directed.

(j) Proposed consent orders, petitions for guardianships via Form WC-226a and Form WC-226b, claim initiating Form WC-14s where there is no social security number, Form WC-14s adding additional parties, and Form WC-12s, are exempt from section (a) and may be filed in paper only with the Board in Atlanta, Georgia.

(k) Any filing, document, correspondence, or form filed with the Board that is not in compliance with this rule shall be rejected.

(l) Upon request, or on its own, the Board, in its discretion, may grant exceptions to this rule.

Note as to revisions. — This rule was added effective July 1, 2009.

The revision effective July 1, 2010, in subsection (i), deleted the former last sentence, which read: "Upon approval by the Board or an Administrative Law Judge, an attorney may timely file a declaration seeking relief for not meeting the deadline as a result of a technical failure by submitting an affidavit to this effect along with the submitted document." and added the present last two sentences.

Rule 102.2. Policy for Electronic and Photographic News Coverage of Proceedings.

Unless otherwise provided by rule of the State Board of Workers' Compensation or otherwise ordered by the assigned Judge after appropriate hearing (conducted after notice to all parties and counsel of record) and findings, representatives of the print and electronic public media may be present at and unobtrusively make written notes and sketches pertaining to any proceedings at the Board. In any event, said representatives are to provide the assigned Judge advanced notice of their intent to attend and to make such notes and sketches so the Judge may insure that they do not otherwise interfere with the proceedings. However, due to the inherent distractive nature of electronic or photographic equipment, representatives of the public media utilizing such equipment or seeking permission to do so are subject to the discretion of the Presiding Judge as well as the following restrictions and conditions;

(A) Persons desiring to broadcast/record/photograph proceedings must file a timely written request (form attached as Exhibit "A"), before the subject proceeding, with the judge involved and all parties of record to the hearing or trial, specifying the particular proceeding for which such coverage is intended; the type equipment to be used in the hearing room; the proceeding to be covered; and the person responsible for installation and operation of such equipment.

(B) Approval of the judge to broadcast/record/photograph a proceeding, if granted, shall be granted without partiality or preference to any person, new agency, or type of electronic or photographic coverage, who agrees to abide by and conform to these rules, up to the capacity of the space designated for the hearing room. Violation of these rules will be grounds for reporter/technician to be removed or excluded from the hearing room (and contempt proceeding initiated).

(C) The judge may exercise discretion and require pooled coverage which would allow only one still photographer, one television camera and attendant, and one radio or tape recorder outlet and attendant. Photographers, electronic reporters and technicians shall be expected to arrange among themselves pooled coverage if so directed by the judge and to present the judge with a schedule and description of the pooled coverage. If the covering persons cannot agree on such a schedule or arrangement, the schedule and arrangements for polled coverage may be designated at the judge's discretion.

(D) The positioning and removal of cameras and electronic devices shall be done quietly and if possible, before or after the hearing or during recesses; in no event shall such disturb the proceedings. In every such case, equipment should be in place and ready to operate before the time the hearing is scheduled to begin.

(E) Overhead lights in the hearing room shall be switched on and off only by board personnel no other lights, flashbulbs, flashes or sudden light changes may be used unless the judge approves beforehand.

(F) No adjustment of central audio system shall be made except by persons authorized by the Board. Audio recordings of the proceeding will be from one source, normally by connection to the central audio system. Upon prior approval of the Board, other microphones may be added in an unobtrusive manner to the public address system.

(G) All television cameras, still cameras and tape recorders shall be assigned to specific portion of the public-area of the hearing room or specially designed access areas, and such equipment will not be permitted to be removed or relocated during the court proceedings.

(H) Still cameras must have quiet functioning shutters and advancers. Movie and television cameras and broadcasting and record-

ing devices must be quiet running. If any equipment is determined by the judge to be of such noise as to be distractive to the proceedings, then such equipment can be excluded from the hearing room by the judge.

(I) Reporters, photographers, and technicians must have and produce upon request of Board officials credentials identifying them and the media company for which they work.

(J) Proceedings shall not be interrupted by a reporter or technician with a technical or an equipment problem.

(K) Reporters, photographers, and technicians should do everything possible to avoid attracting attention to themselves. Reporters, photographers, and technicians will be accorded full right of access to proceedings for obtaining public information within the requirements of due process of law, so long as it is done without detracting from the dignity and decorum of the hearing.

(L) Other than as permitted by these rules and guidelines, there will be no photographing, radio or television broadcasting, including video taping pertaining to any proceedings on the floor where the hearing or proceeding is being held or any other floor whereon is located a hearing, whether or not the hearing is actually in session.

(M) No interviews pertaining to a particular proceeding will be conducted in the hearing room except with the permission of the judge.

(N) Upon receipt of request pursuant to exhibit "A" which is attached hereto, the board shall give notice to all parties involved in the case and field judges shall contact the administrator of the facility at which the proceeding is going to be held, if the proceeding is not scheduled to be held at a board facility, to determine that facilities rules or requirements with respect to the request and the granting of the request shall be, in addition to the judge's discretion, subject to that facility's administrator giving approval of the request.

(O) A request for installation and use of electronic recording, transmission, videotaping or motion picture or still photography of any proceeding shall be evaluated pursuant to the standards set forth in OCGA § 15-1-10.1.

EXHIBIT "A"

IN THE STATE BOARD OF WORKERS' COMPENSATION

(STYLE OF CASE) CASE NO. _____

REQUEST TO INSTALL RECORDING AND/OR PHOTOGRAPHING EQUIPMENT PURSUANT TO POLICY AND GUIDELINES

FOR ELECTRONIC AND PHOTOGRAPHIC NEWS COVERAGE OF STATE BOARD OF WORKERS' COMPENSATION PROCEEDINGS.

Pursuant to the State Board of Workers Compensation policy for Electronic and Photographic News Coverage of Proceedings the undersigned hereby requests permission to install equipment in _____ hearing room in order to photograph or televise all or portions of the proceedings in the above-captioned case.

Consistent with the provisions of the policy the undersigned desires to install the following described equipment:_____ in the following location:_____. The proceedings that the undersigned desires to record, photograph or televise commence on (date). Subject to direction from the Board regarding possible pooled coverage, the undersigned wishes to install this equipment in the hearing room on (date)_____. The personnel who will be responsible for the installation and operation of this equipment during its use are: (identify appropriate personnel).

The undersigned hereby certifies that the equipment to be installed and the locations and operation of such equipment will be in conformity with the policy and guidelines issued by the Board.

This _____ day of _____ 20____.

_____
(Individual Signature)

_____
Address

_____
Telephone Number

_____
(Representing/Firm)

_____
(Position)

APPROVED this _____ day of _____, 20____

_____
State Board of Workers' Compensation

Note as to revisions. — This rule was added effective July 1, 2011.

Rule 103. Appeals to the Appellate Division.

(a) The time for application for review commences on the date shown on the notice of award and is computed as in paragraph (3) of subsection (d) of O.C.G.A. § 1-3-1.

(b) Appearance before the Appellate Division shall be by brief only unless a request for oral argument is made at the time the application for review is filed by appeal or cross appeal. Within 10 days from the date of the certificate of service on the application for review, the appellee or cross appellee may request oral argument. Oral argument shall be limited to five minutes for each party.

(1) Any party applying for review shall serve a copy of the application for review and enumerations of errors allegedly made by the Administrative Law Judge upon all opposing parties. Failure to file enumerations of error with the Board may result in the dismissal of the appeal or cross appeal.

(2) The party requesting review shall have 20 days from the date shown on the certificate of service of the application for review in which to file a brief. The party requesting the review shall certify that a copy of the brief was served in person or by mail to all opposing parties on the date the brief is submitted to the Board. Opposing parties shall then have 20 days from the date of appellant's or cross appellant's certificate of service to file reply briefs with the Board. Briefs not filed in conformity with this rule will not be accepted except by permission of the Board.

(3) Notices of Oral Argument, and other correspondence, will be sent by electronic mail and only to attorneys of record. Whenever electronic transmission is not available, a Notice of Oral Argument, or other correspondence, shall be sent by mail.

(4) Briefs shall generally follow the format required by the appellate courts. Only the original of the brief is required to be filed with the Board. Briefs shall be limited to 20 pages, unless otherwise approved by the Board.

(5) Where a case has been scheduled on a calendar for oral argument, no more than one postponement will be granted to reschedule the argument. If the argument cannot be made within that time, the claim may be reviewed on briefs only.

(6) Any party scheduled for oral argument shall notify the Appellate Division no later than 48 hours before the scheduled appearance if they do not intend to appear.

(7) Amicus curiae briefs may be filed without permission any time before a decision is issued. The amicus brief shall disclose the identity and interest of the person or group on whose behalf the brief is filed.

(8) In a pending appeal before the Appellate Division, whenever the issues resolve, in whole or in part, or a case settles, the parties or attorneys shall immediately notify the Court Clerk of the Appellate Division: (1) first, by telephone call; and (2) if so instructed by the Appellate Division, by subsequent written or electronic confirmation. Any party or attorney who fails to follow this procedure, and who is unable to show good cause for such failure, may be subject to civil penalties, assessed attorney's fees, and/or costs.

(9) When filing a motion for reconsideration, the parties or attorneys shall: (1) immediately notify the Court Clerk of the Appellate Division or the Board by telephone call; (2) use the ICMS doc-type labeled motion for reconsideration; (3) limit their motion to 20 pages, including briefs and exhibits, unless otherwise permitted by the Court Clerk or the Board; and (4) serve a copy on all counsel and unrepresented parties, along with supporting documents, including a separate certificate of service identifying the names and addresses served.

(10) An appeal shall be filed electronically through ICMS. However, in the event of an outage preventing an electronic submission and the time for filing an appeal is at issue, an appeal may be filed in paper or by facsimile with any Board office. Any filing by facsimile transmission must be clearly labeled with the name of the claimant, claim number, and Board division or employee to whom the facsimile transmission is directed.

(c) The Board will apply the law of Georgia regarding the tenure and character of newly discovered evidence required for the granting of a new trial.

(d) The Board will not accept an application for review of an interlocutory order unless the Administrative Law Judge, in the exercise of his or her discretion, certifies that the order or decision is of such importance to the case that immediate review should be had. In the event the Administrative Law Judge certifies his or her interlocutory order for immediate review, in order for the Appellate Division to have jurisdiction under O.C.G.A. § 34-9-103(a), a party must file an application for review with the Appellate Division within twenty days of the date of the original interlocutory order.

(e) No person appearing before the Appellate Division shall engage in any undignified or discourteous conduct.

(f) Upon determining that an appeal has been prosecuted without reasonable grounds, the Appellate Division shall have the authority to assess penalties and attorneys' fees against the offending party.

Note as to revisions. — The revision effective July 1, 2009, added paragraph (b)(10).

The revision effective July 1, 2010, substituted "48 hours before" for "4:30 the day before" in paragraph (b)(6) and, in paragraph (b)(10), deleted ", only with the prior express permission of the Board" following "Board office" at the end of the second sentence, and added the last sentence.

Rule 104. Suspension/Reinstatement of Benefits.

(a) To unilaterally convert the employee's income benefits from temporary total disability income benefits to temporary partial disability income benefits under O.C.G.A. § 34-9-104(a)(2), the employer/insurer shall file a Form WC-104 with the Board and shall serve the employee and the employee's attorney the Form WC-104 no later than 60 days from the date the employee was released to work with restrictions by the employee's authorized treating physician. In addition, the employer/insurer shall attach to the Form WC-104 the supporting medical report from employee's authorized treating physician demonstrating the employee is capable of performing work with restrictions.

(b) After filing the Form WC-104 with the Board and serving the employee and the employee's attorney sufficient and timely notice under section (a), if the employee has been released to work with restrictions for 52 consecutive weeks or 78 aggregate weeks, the employer/insurer may unilaterally convert the employee's income benefits from temporary total disability income benefits to temporary partial disability income benefits by filing a Form WC-2 with the Board. Copies of all filings and supporting documents shall be served on the employee and the employee's attorney, if represented.

(c) Pursuant to Board Rule 60(c), all documents filed with the Board shall contain the employee's name, date of injury, and Board claim number. Any document that does not contain this information shall be rejected by the Board.

Note as to revisions. — The revision effective July 1, 2009, added subsection (c).

The revision effective January 1, 2014, in subsection (a), in the first sentence, inserted "file a Form WC-104 with the Board and shall" and substituted "the Form WC-104" for "a Form WC-104", and in the second sentence, inserted "supporting", and "from employee's authorized treating physician" near the middle; in subsection (b), inserted "filing the Form WC-104 with the Board and" in the first sentence, deleted the former second sentence, which read: "When filing the Form WC-2, the employer/insurer shall attach the Form WC-104 and attached medical report.", and in the last sentence inserted "and supporting documents"; in subsection (c), deleted the former first sentence, which read: "If filing via EDI, section (b) shall be followed and the employer/insurer shall simultaneously mail to, or electronically file with, the Board the filed Subsequent Report of Injury (SROI) or Form WC-2 and a copy of the served Form WC-104 and supporting medical report from employee's authorized treating physician." and deleted the former last sentence, which read: "Copies of all filings

shall be served on the employee and the employee's attorney, if represented."

Rule 105. Appeals to the Courts.

(a) The prevailing party shall supply the Board with copies of the following documents:

(1) Order of Superior Court disposing of an appeal;

(2) Denial by the Court of Appeals or Supreme Court of an application for discretionary review;

(3) Notice of appeal from Superior Court to Court of Appeals or Supreme Court where discretionary appeal is granted;

(4) Denial of certiorari by the Supreme Court from a decision of the Court of Appeals;

(5) Court of Appeals remittitur to Superior Court;

(6) Judgment on remittitur from Superior Court when the Court of Appeals does anything other than affirm the judgment of the Superior Court.

(b) The non-prevailing party shall supply the Board with the following documents:

(1) Application to the Court of Appeals or Supreme Court for discretionary review of a judgment of the Superior Court;

(2) Application to the Supreme Court for certiorari to review a decision of the Court of Appeals;

(3) Notice from the Supreme Court of granting of certiorari from a decision of the Court of Appeals.

(c) The party dismissing an appeal shall file a copy of the dismissal with the Board.

(d) In the event of a settlement during the pendency of an appeal, it shall be the joint obligation of the parties to supply the Board with copies of all documents necessary to restore jurisdiction to the Board to consider the settlement.

(e) Copies of the documents listed above shall be submitted to the Board by regular mail within five days of filing in the appropriate court.

(f) Any party filing with the Board an appeal to Superior Court shall pay the reasonable copying and transmittal costs of the Board. Upon good cause shown, the Board may waive the copying and transmittal costs.

(g) An appeal shall be filed electronically through ICMS. However, in the event of an outage preventing an electronic submission and the time for filing an appeal is at issue, an appeal may be filed in paper or by facsimile with any Board office. Any filing by facsimile transmission must be clearly labeled with the name of the claimant, claim number, and Board division or employee to whom the facsimile transmission is directed.

Note as to revisions. — The revision effective July 1, 2009, added subsection (g).

The revision effective July 1, 2010, in subsection (g), deleted ", only with the prior express permission of the Board" following "Board office" at the end of the second sentence, and added the last sentence.

Rule 108. Attorney's Fees.

The attorney's fee shall not exceed 400 weeks of income benefits and may be terminated or suspended sooner as provided by law or at the Board's discretion. The Board may, in its discretion, approve an attorney's fee for a period of greater than 400 weeks so long as the attorney fee is not in excess of 25% of the claimant's weekly benefits.

(a) Attorney fee contracts. Immediately upon being employed by an employee or claimant in a matter which is before the Board, the attorney shall file a contract of employment and fees with the Board. This contract shall include the following attorney typed information: (1) name, (2) bar number, (3) firm name, (4) address, (5) phone number, (6) fax number, (7) email address, and (8) Board claim number. If the Board claim number is not known, this contract shall include the employee's first name, last name, social security number, and date of injury. Finally, all contracts shall include the employee's name and address. This contract shall be dated, and shall be signed by both the attorney and the client, and shall include the following statement with respect to an accident occurring on or after July 1, 1992:

> This contract is subject to the approval of the State Board of Workers' Compensation, and no fee of more than $100.00 shall be paid under the contract unless approved by the Board.
>
> No contract shall be filed with the Board which provides for a fee greater than 25 percent of the recovery of weekly benefits. Any contract with these terms, absent compelling evidence to the contrary, shall be deemed to represent the reasonable fee of the attorney.
>
> No party or any party's attorney shall enter into a loan or assignment with a third party creditor which requires repayment from the proceeds of a workers' compensation claim.

With respect to an accident occurring before July 1, 1992, the contract shall include the following statement:

> This contract is subject to the approval of the State Board of Workers' Compensation, and no fee of more than $100.00 shall be paid under the contract unless approved by the Board.
>
> No contract concerning an accident occurring before July 1, 1992, shall be filed with the Board which provides for a fee greater than 25 percent of the recovery of weekly benefits without a hearing, 30 percent of the recovery of weekly benefits with extensive discovery preparatory for a hearing, and 33-1/3 percent of the recovery of weekly benefits after a hearing. Any contract with these terms, absent compelling evidence to the contrary, shall be deemed to represent the reasonable fee of the attorney.
>
> No party or any party's attorney shall enter into a loan or assignment with a third party creditor which requires repayment from the proceeds of a workers' compensation claim.

An attorney who requests approval of his or her fee contract when there is no pending litigation shall file with the Board Form WC-108a. When an attorney requests approval of his or her fee contract after a hearing notice has been issued and after the dispute has been resolved, that attorney shall file Form WC-108a with the Administrative Law Judge who issued the hearing notice.

(b)(1) The value of the services of the attorney may be agreed upon by the parties subject to approval of the Board.

(2) Any offer to make payment if the party waives a claim for attorney's fees under paragraph (2) or (3) of subsection (b) of O.C.G.A. § 34-9-108, or any agreement to waive a claim for attorney's fees as a condition to payment of income or medical benefits, where the only consideration for such waiver is the commencement of income or medical benefits, shall be void *ab initio*.

(3) No party shall be required to pay an attorney for services for which the fee was assessed against the opposing party. The Board, if deemed appropriate, may approve an attorney's fee which combines fees assessed against an opposing party and fees paid pursuant to approval of an attorney fee contract, provided that the claimant receives a credit for the assessed fee.

(4) An attorney advertising to render services to a potential workers' compensation claimant must intend to render said services and shall not divide a fee with another attorney who is not a partner in or associate of his or her law firm unless:

1. The client consents to associating the other attorney after full disclosure that the fee will be divided; and,

2. The fee division is made in direct proportion to the services and responsibility performed and assumed by each attorney; and,

3. The total fee of the attorneys shall not exceed a reasonable fee for the claim.

No party shall be required to pay for the services of an attorney who violates the provisions of O.C.G.A. § 34-9-108(c).

(5) Upon assessing attorney's fees, costs may be assessed against the offending party which are payable to the Board in an amount not less than $250.00. The Administrative Law Judge may assess higher costs based on the length of the hearing, time traveled, and time lost from other duties. In any case where a determination is made that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the Administrative Law Judge or the Board may, in addition to assessed attorney's fees, award to the adverse party reasonable litigation expenses, in whole or in part, against the offending party. Reasonable litigation expenses under this subsection are limited to witness fees and mileage pursuant to O.C.G.A. § 24-10-24 (24-13-24 effective 1/1/13); reasonable expert witness fees (subject to the Fee Schedule, where applicable); reasonable deposition costs; and the cost of the hearing transcript.

(6) When requesting payment of attorney's fees at a hearing pursuant to O.C.G.A. § 34-9-108, the party making the request shall be required to demonstrate the reasonableness of the attorney's fees requested by placing into the record expert testimony as to the value of services rendered. Counsel may testify personally or in affidavit form at the hearing, subject to cross-examination, as to expert status and the reasonable value of the services rendered in order to meet this requirement. No attorney's fees will be awarded pursuant to O.C.G.A. § 34-9-108 absent this evidence being placed in the record.

(7) When the parties agree to an assessment of attorney's fees, any attorney of record may file with the Board a Form WC-108a, serve a copy on all parties or their counsel, and sign the certificate of service on the form.

(8) An attorney shall not receive an attorney's fee on any medical treatment or expenses required for an employee, unless such fee is assessed under O.C.G.A. § 34-9-108(b)(1).

(9) The Board shall not approve a percentage of the claimant's weekly benefits as an attorney fee unless the attorney sufficiently

shows that the payment of weekly benefits is the result of the attorney's efforts.

(10) If an attorney obtains the "catastrophic" designation for a claim under O.C.G.A. § 34-9-200.1(g), reinstates income benefits after a unilateral reduction under O.C.G.A. § 34-9-104(a)(2), and/or prevents a change in condition, then, upon request, the Board may approve the attorney's fee contract to commence at such time as the benefit accrues to the claimant and if deemed appropriate by the Board.

(c) Solicitation of Services. See O.C.G.A. §§ 34-9-22, 34-9-30, 34-9-31 and 34-9-32.

(d) An attorney who has made an appearance by filing Form WC-14 or Form 102B or by filing a fee contract and who wishes to withdraw as counsel for any party therein, shall file a Form WC-108b with the Board and serve a copy on all counsel an unrepresented parties, including the former client. At the time of withdrawal, the attorney shall provide all current contact information for the former client to the Board and all parties.

(e) An attorney of record who chooses to file a lien for services and/or expenses must do so by filing written notice of the contended value of such services and/or expenses with the Board on Form WC-108b within 20 days after (i) withdrawal from the case, or (ii) notice of termination of the contract in writing by the client. The attorney of record filing a lien shall serve a copy of Form WC-108b on all unrepresented parties and counsel. Failure to attach supporting documentation will result in the lien being denied. If the Board includes the issue of approval of the lien for determination at a hearing or mediation, and the attorney who filed the lien fails to appear and present evidence in support of the lien, then it shall be void. If all parties agree to resolution of a lien request prior to the initiation of litigation, then one of them must file with the Board Form WC-108b. Failure to perfect a lien in this manner will be considered a waiver of further attorneys' fees.

(f) No attorney shall charge to any client as an expense of litigation any portion of any referral fee or membership charged by any lawyer referral service, or nonspecific office costs.

Note as to revisions. — The revision effective July 1, 2009, substituted "any attorney of record may file with the Board a Form" for "the attorney who is to receive the assessed fee shall filed with the Board Form" in paragraph (b)(7) and substituted "weekly" for "income" in paragraph (b)(9).

The revision effective July 1, 2010, added the fourth and eighth paragraphs in subsection (a).

The revision effective July 1, 2011, in subsection (d), inserted "or Form 102B" near the beginning and added "and serve a copy on all counsel an unrepresented parties, including the former client" at the end; and in subsection (e), inserted

"and/or expenses" twice in the first sentence and deleted "fee" preceding "lien" twice in the next-to-last sentence.

The revision effective July 1, 2012, inserted "(24-13-24 effective 1/1/13)" near the end of the last sentence paragraph (b)(5); and substituted "required" for "obtained" in paragraph (b)(8).

The revision effective July 1, 2015, added the last sentence to subsection (d).

Rule 121. Insurance in More Than One Company; Self-Insurance; Insurance by Counties and Municipalities.

(a) A compensation policy must cover all of the operations of an employer, except as hereinafter provided. An employer has the right to place insurance with more than one insurer; but if this is done with respect to distinct operations, the policies must be concurrent and the written portions must read alike. If there is any difference in coverage, it can be expressed as applying to a fractional part thereof. If an employer has more than one place of business, each operation can be covered separately unless the business is interchangeable. Each insurer on the risk must cover alike all the employees coming under the law.

(b) Any employer desiring to become a self-insurer shall apply on the form prescribed by the Self-Insurers Guaranty Trust Fund Board of Trustees and approved by the Board. All inquiries must be answered fully and will be treated as strictly confidential. The Self-Insurers Board of Trustees, with the approval of the Board, shall set the amount of security in the form of a surety bond or letter of credit to be required, but in no event shall the amount be less than $250,000.00. It shall be at the discretion of the Self-Insurers Guaranty Trust Fund Board of Trustees if other forms of security are acceptable. Each case will be considered on its own merits with strict regard to the hazards of the business involved. So long as an employer shall continue solvent and promptly pay any and all compensation legally due in accordance with the provision of the law there shall be no effort to collect under the securities.

(c) **Excess insurance for self-insured governmental entities.** Counties, municipalities, and other political subdivisions must qualify as self-insurers or obtain insurance coverage. Permission for self-insurance by counties, municipalities and political subdivisions may be granted by application therefor and without deposit of surety bonds security. Assurance must be given the Board, however, that provision will be made for the payment of all workers' compensation benefits conferred by this chapter. Each active participant shall be required to purchase excess insurance in an amount and with specific retention levels acceptable to the Board.

(d) When an insurer, self-insurer, or group self-insurance fund obtains the services of a servicing agent or third party administrator for

the purpose of administering workers' compensation matters, the insurer, self-insurer, or group self-insurance fund shall give notice to the Board on a Form WC-121 (or annual update) of the name and address of each servicing agent or third party administrator handling Georgia claims, the name, address and telephone number of a contact person with that third party administrator or servicing agent, the effective date of the servicing agent's or third party administrator's commencement of services, and if applicable, the ending date of those services, and shall file Form WC-121 with the Board no later than the agreed commencement date of those services. The insurer, self-insurer, or group self-insurance fund shall also give notice by regular mail or electronic mail of the servicing agent's or third party administrator's name, address and telephone number to the claimants in all existing claims for which it is commencing administration within 14 days of commencing services. When the relationship between the insurer, self-insurer or group self-insurance fund and the servicing agent or third party administrator is terminated, the insurer, self-insurer, or group self-insurance fund shall file Form WC-121 with the State Board of Workers' Compensation no later than 30 days prior to the date of cessation of services, and shall give notice, by regular mail or electronic mail to all claimants in existing claims which it has been administering.

(e) Within 10 days from the date an employer determines its inability to make payment for workers' compensation benefits, the employer shall notify its surety and the Board in writing of its inability to fulfill its obligations under the Act.

Upon receipt of information establishing an employer's inability to meet its obligations under the Act, or upon notice from an employer that it is unable to meet its obligations under the Act, the Board shall make demand of the surety for payment of the bond or other security held. The Board shall give written notice of the demand for payment to the employer, and all claimants affected by this proceeding.

After the Board receives the proceeds of the bond or other security, then the Board shall determine whether the amount of the security is sufficient to pay all of the employer's obligations arising under this Chapter. If it is not sufficient, the Board shall apportion the proceeds of the bond, or other security held for distribution.

The Board may enter into an agreement with a servicing agent or the Georgia Self-Insurers Guaranty Trust Fund to administer the settlement of claims pursuant to this section.

(f) Rules for third party administrators/servicing agents.

(1) A third party administrator/servicing agent must be licensed by the Office of Commissioner of Insurance pursuant to O.C.G.A. § 33-23-100 and follow the Rules and Regulations of the Insurance

Commissioner's Office Chapter 120-2-49 entitled Administrator Regulations.

(2) The third party administrator/servicing agent must comply with all sections of O.C.G.A. § 34-9 and all rules and regulations of the Board.

(3) Workers' Compensation claim files of third party administrators/servicing agents are subject to audit by the Board at any time.

(4) The transfer of files from one third party administrator/servicing agent to another must be handled in a professional and timely manner.

(i) Open indemnity files must be current as of the date of transfer and the transferring (former) third party administrator/servicing agent must include in the file a complete current Form WC-4 (completed within the last 30 days) reflecting all payments made as of the date of transfer. The transferring third party administrator/servicing agent must at the date of transfer provide the receiving third party administrator with a payment history on all Medical Only claims with an occurrence date of 90 days or less as of the date of transfer. Penalties for noncompliance by the transferring third party administrator/servicing agent would be in accordance with O.C.G.A. § 34-9-18(a).

(ii) The receiving (new) third party administrator/servicing agent must notify all active (open) claimants of the change in administration within 14 days of receiving the files. Vendors must be notified within 60 days of receipt of medical bills or service invoices.

Note as to revisions. — The revision effective July 1, 2011, substituted "$250,000.00" for "$100,000.00" at the end of the third sentence of subsection (b); and in subsection (c), inserted "counties," in the second sentence, and substituted "workers' compensation benefits conferred by this chapter" for "awards" in the next-to-last sentence, and added the last sentence.

The revision effective July 1, 2015, added "in an amount and with specific retention levels acceptable to the Board" to the end of subsection (c).

Rule 126. Proof of Compliance with Insurance Provisions.

(a) Every employer insured by a licensed insurer shall have proof of coverage documented by its insurer directly with a Licensed Rating Organization through their policy information system. Every employee leasing company shall have proof of coverage documented with a Licensed Rating Organization of the initiation or termination of any contractual relationship with a client company; for the purposes of this Rule, the term employee leasing company shall refer to both; (1) any employee leasing company defined in O.C.G.A. § 34-8-32, and (2) any

professional employer organization as defined in O.C.G.A. § 34-7-6. Reports will be made to the Licensed Rating Organization pursuant to procedures outlined by the Licensed Rating Organization and approved by the Georgia State Board of Workers' Compensation.

(1) The proof of coverage documented with a Licensed Rating Organization is evidence that coverage is in effect until superseded or terminated.

(2) Termination

(i) Non-renewals

The expiration date documented by a Licensed Rating Organization shall be considered the date of termination on all non-renewals.

(ii) Mid-term cancellation by a licensed insurer

A mid-term cancellation by a licensed insurer documented with a Licensed Rating Organization is evidence that coverage is terminated, effective not less than 15 days after filing except where the provisions of Title 33 provide for an earlier effective date.

(b) Group self-insurance funds operating pursuant to the Georgia Workers' Compensation Act shall file with the Board a separate report for each insured member employer on Standard Coverage Form WC-11 on or before the effective date of coverage.

(1) The filing of Form WC-11 is evidence that coverage is in effect until superseded or terminated.

(2) The filing of a cancellation by a group self-insurer fund on Form WC-11 is evidence that coverage is terminated, effective not less than 15 days after filing.

(3) If the insured member employer operates under different trade names or d/b/a ("doing business as" name), a separate Form WC-11 must be filed for each trade name, properly cross-referenced.

(4) Group self-insurance funds shall file a separate Form WC-11 for each insured member of the fund.

(c) Self-insurers must give written notice to the Board when they add or delete subsidiaries, affiliates, divisions or locations to their self-insurance certificate, or make any changes in their excess insurance policies. (See Rule 382(d).)

Note as to revisions. — The revision effective July 1, 2009, inserted "or d/b/a ('doing business as' name)" in paragraph (b)(3), deleted "by July 1, 1987" at the end of paragraph (b)(4), and deleted "addressed to the Director of Licensure and Quality Assurance" preceding "when they add" in subsection (c).

Rule 131. Designation by Insurer of Office for Service of Notices.

The most recent address for servicing agents/claims offices submitted by an insurer, self-insured employer, or group self-insurer, on a Form WC-121, Form WC-131, Form WC-131a, self-insurer's member information annual update, or provided in the trading partner agreement between insurers, self-insured employers, group self-insurers, designated claims offices (TPAs) and their EDI vendor for Electronic Data Interchange (EDI) shall be used as the address of record for service of forms, notices, orders, and awards.

Note as to revisions. — The revision effective July 1, 2009, substituted "self-insurer's member information annual update, or provided in the trading partner agreement between insurers, self-insured employers, group self-insurers, designated claims offices (TPAs) and their EDI vendor for Electronic Data Interchange (EDI)" for "or annual update" in this rule.

Rule 200.1. Provision of Rehabilitation Services.

(I) **REHABILITATION SUPPLIERS.** A rehabilitation supplier delivers and coordinates services under an individualized rehabilitation plan; facilitates coordination of medical care; provides vocational counseling, exploration, and assessment; performs job analysis, job development, modification, and placement; evaluates social, medical, vocational, psychological, and psychiatric information; and may provide additional services upon agreement of the parties or Board order.

(A) **Qualified Certifications or Licenses.** To provide rehabilitation services, the supplier must be registered with the Board. To provide services in catastrophic claims, the supplier must be registered with the Board as a catastrophic supplier.

Any rehabilitation supplier who wishes to supply services in a Workers' Compensation claim shall hold one of the following certifications or licenses:

(1) Certified Rehabilitation Counselor (CRC);

(2) Certified Disability Management Specialist (CDMS);

(3) Certified Rehabilitation Registered Nurse (CRRN);

(4) Work Adjustment and Vocational Evaluation Specialist (WAVES);

(5) Licensed Professional Counselor (LPC);

(6) Licensed Professional Counselor (LPC);

(7) Certified Occupational Health Nurse (COHN); or

(8) Certified Occupational Health Nurse Specialist (COHN-S).

(B) **Registration with the Board.**

(1) To register as a rehabilitation supplier or a catastrophic rehabilitation supplier, an applicant shall follow the application process as provided in the Board's Rehabilitation & Managed Care Procedure Manual.

(2) Notice of a rehabilitation supplier's registration approval will contain a supplier registration number with the November 30th expiration date, which shall be included on all reports submitted to the Board by the rehabilitation supplier.

(3) Within twenty (20) days of the date of a denial of an application for registration as a supplier, an appeal may be initiated by filing a written request with the Director of Managed Care and Rehabilitation (MC&R) for a conference. The applicant will be notified in writing of the date, time, and place of the conference within thirty days of the appeal. An applicant dissatisfied with the decision following the conference may request a hearing by written request within twenty (20) days of the conference decision.

(II) **CATASTROPHIC REHABILITATION SERVICES.**

(A) **Appointment of Catastrophic Rehabilitation Supplier.**

(1) Where catastrophic designation is undisputed, the employer/insurer shall appoint a registered catastrophic rehabilitation supplier within 48 hours of accepting the injury as compensable or notification of a final determination of compensability by filing a Form WC-R1 which may be filed simultaneously with the Employer's First Report of Injury (WC-1). If the employer/insurer does not timely appoint a registered catastrophic rehabilitation supplier as required pursuant to this subsection, the employee may file a WC-R1 to request the appointment of a registered catastrophic rehabilitation supplier with service to all parties and the requested supplier.

(2) When a catastrophic designation is disputed, employee or employee's attorney shall file a WC-R1CATEE to request catastrophic designation and appointment of a registered catastrophic rehabilitation supplier. The WC-R1CATEE must be accompanied by documentation as specified in the current edition of the Board's Rehabilitation & Managed Care Procedure Manual, or as requested by the Board, unless a hearing is requested within twenty (20) days of the filing of the WC-R1CATEE.

(3) Objection to the WC-R1CATEE must be filed on a Form WC-Rehab Objection with the Board within twenty (20) days of the

certificate of service on the WC-R1CATEE. In the alternative, either party may file a Form WC-14 requesting an evidentiary hearing within twenty (20) days of the certificate of service on the WC-RICATEE. In the event a Form WC-14 is filed, the file shall be transferred to an administrative law judge for an evidentiary hearing without an administrative decision being rendered by the Rehabilitation Coordinator. The timeliness of the objection or hearing request will be processed in accordance with provisions of O.C.G.A. §9-ll-6(e).

(4) When a Board determination is made by the MC & R or an administrative law judge that an injury is catastrophic, the employer/insurer shall have twenty (20) days from the date of notification of the determination to select a Board registered catastrophic rehabilitation supplier by filing a WC-R1. If the employer/insurer fails to select a supplier, or files an appeal of the determination to the Appellate Division and the catastrophic designation is upheld on appeal, the Board will select the catastrophic rehabilitation supplier, and may, in the Board's discretion, appoint a supplier requested by the employee.

(B) **Catastrophic Rehabilitation Supplier Duties.**

(1) A catastrophic rehabilitation supplier is not a party to the case. The registered catastrophic rehabilitation supplier shall have sole responsibility for the rehabilitation aspects of each individual case. The registered catastrophic rehabilitation supplier shall communicate with the injured employee and others to assess, plan, implement, coordinate, monitor and evaluate options and services to meet an injured employee's rehabilitation needs to effect a cure, give relief or restore the employee to suitable employment.

(2) The registered catastrophic rehabilitation supplier shall meet with the injured employee within thirty (30) days of appointment and complete an initial rehabilitation evaluation and an appropriate plan (WC-R2A) for medical and/or vocational services.

(3) The designated rehabilitation supplier may arrange for services outside of his/her scope of expertise and qualifications.

(4) Form WC-R2 with accompanying progress/status reports shall be filed no less than every ninety days.

(5) A rehabilitation supplier will inform all parties of the responsibility to provide services in accordance with their professional qualifications. The rehabilitation supplier shall function within the scope of his or her role, training, and technical competency and will accept only those referrals and/or assignments for which he or she is professionally qualified.

(6) The rehabilitation supplier shall disclose any known conflicts of interest.

(7) The rehabilitation supplier shall recognize that the authorized treating physician directs the medical care of an injured employee.

(8) The rehabilitation supplier shall insure the confidentiality of the injured employee's medical records and shall not disclose the medical records to non-parties without the written consent of the injured employee or unless otherwise legally required to do so.

(9) A rehabilitation supplier shall refrain from activity pertaining to settlement negotiations, surveillance or provision of legal advice.

(10) Rehabilitation suppliers shall advise a non-represented injured employee to direct questions outside his/her area of expertise to the State Board of Workers' Compensation and a represented injured employee to direct questions to his or her counsel.

(11) A rehabilitation supplier shall not accept any additional compensation or reward from any source as a result of settlement of a case. A rehabilitation supplier shall not accept any additional compensation or reward from any source as a result of settlement of a case.

(12) The assigned rehabilitation supplier shall not perform any additional services for either party for compensation not contemplated by the approved plan, unless all parties agree.

(C) **Rehabilitation Plans.**

(1) The initial rehabilitation plan must be filed with the Board on Form WC-R2A within ninety (90) days of the supplier's appointment to the claim, unless excused by the Board. A current Rehabilitation Plan must be filed with the Board during all phases of service delivery and shall be in place no longer than one year. All rehabilitation plans shall provide for reasonable and necessary items and services and be submitted with supporting documentation. If the Board rejects the proposed rehabilitation plan, the registered catastrophic rehabilitation supplier shall have 30 days to submit a revised plan. An amended rehabilitation plan on a WC-R2A shall be filed at any time the circumstances change significantly. Amended or extended rehabilitation plans shall be submitted thirty days prior to the expiration of the current approved plan.

(2) Plans may include any or all of the items and services, including housing and transportation, which are reasonable and

necessary to return the catastrophically injured employee to the least restrictive lifestyle possible, and/or return to work including: Medical Care Coordination, Independent Living, Extended Evaluation, Job Placement, Training and/or Self Employment.

(3) Return-to work plans, in order of preference, are: a) return to same job with the same employer; b) return to different job with same employer; c) return to work with new employer; d) short-term training; e) long-term training; or f) self-employment.

(4) Any party objecting to a proposed rehabilitation plan shall file a WC-Rehab Objection Form with the Board within twenty (20) days of the date of the certificate of service. The Rehabilitation Division will issue an administrative decision and may hold a rehabilitation conference.

(5) Signed plans submitted without objection are approved automatically.

(D) **Communication.**

(1) A catastrophic rehabilitation supplier shall simultaneously provide copies of all correspondence, written communication, and documentation of oral communications with the treating physician to all parties and their attorneys.

(2) The catastrophic rehabilitation supplier shall provide professional identification and shall explain his or her role to any physician at the initial contact with the physician.

(3) The employee has the right to a private physical examination with the medical provider. The catastrophic rehabilitation supplier shall attend such examination, only with revocable written consent of the employee, or his or her representative, after the employee has been advised of the right to a private examination. The catastrophic rehabilitation supplier may meet with the physician and the employee after the private exam.

(4) The catastrophic rehabilitation supplier shall not obtain medical information regarding an injured employee in a private meeting with any treating physician unless the catastrophic rehabilitation supplier has reserved with the physician sufficient appointment time for the conference and the injured employee and his or her attorney were given ten days advance notice of their option to attend the conference. If the injured employee or the physician does not consent to a joint conference, or if, in the physician's opinion, it is medically contraindicated for the injured employee to participate in the conference, the catastrophic rehabilitation supplier shall note this in his or her report and may in those specific instances communicate directly with the physician.

Exceptions to the above notice requirements may be made in cases of medical necessity or with the consent of the injured employee or his or her attorney.

(E) **Rehabilitation Conferences.**

(1) A rehabilitation conference may be scheduled at the request of a party or the catastrophic rehabilitation supplier by filing a WC-R5, or at the discretion of an Administrative Law Judge or the Board's rehabilitation coordinator.

(2) All parties, attorneys of record, and the catastrophic rehabilitation supplier may be required to attend the conference or to be represented by a person with full authority to resolve the pending disputes. Only the parties, attorneys of record, and catastrophic rehabilitation supplier may attend a scheduled mediation or rehabilitation conference. Exceptions to attendance may be granted if approved in advance by the Board rehabilitation coordinator.

(3) Any person notified by the Board who fails to attend a Board scheduled rehabilitation conference without reasonable grounds may be subject to sanction pursuant to O.C.G.A. § 34-9-18. Any party requesting cancellation or rescheduling of a rehabilitation conference shall notify the Board and other parties with adequate notice to all parties.

(4) Following the rehabilitation conference, the Board will issue a conference administrative decision.

(F) **Rehabilitation Closure.**

(1) The registered catastrophic rehabilitation supplier shall submit a WC-R3, Request for Closure, with a closure report as follows: (a) sixty days after the employee's return to work; (b) at any time it is determined that further services are not needed or feasible; (c) when a stipulated settlement that does not include rehabilitation services has been approved by the Board; or (d) when the Board directs rehabilitation closure.

(2) At any time, upon review of the file, the Board may determine that rehabilitation closure is appropriate and may issue an order or an administrative decision to close rehabilitation.

(3) A party may request that the Board close rehabilitation services by filing a WC-R3 setting forth the specific reasons in support of their request for closure with copies to all parties and the supplier.

(4) Any party objecting to a proposed WC-R3 shall file a WC-Rehab Objection Form setting forth the specific reasons within

twenty (20) days of the date of the certificate of service. The Board will issue an administrative decision on all requests for closure.

(G) **Request to Reopen Rehabilitation.**

(1) A request to reopen rehabilitation services may be submitted only by parties to the claim and must be approved by the Board. The WC-R1 requesting that rehabilitation services be reopened shall include the name and address of the catastrophic rehabilitation supplier and the specific reasons for such request. The requesting party shall complete the certificate of service and send copies of the WC-R1 to all parties, their attorneys and the catastrophic rehabilitation supplier.

(2) Any party objecting to a proposed reopening shall file a WC-Rehab Objection Form with supporting documentation within twenty days of the date of the certificate of service. The M C & R will issue an administrative decision on all requests to reopen rehabilitation.

(H) **Change in Registered Catastrophic Rehabilitation Supplier.**

(1) A change in registered catastrophic rehabilitation supplier shall be requested only by parties to the claim and must be approved by the Board. The WC-R1 requesting a change in supplier shall include the names and addresses of the involved suppliers and the specific reasons the change is requested. The requesting party shall complete the certificate of service and send copies of the WC-R1 to all parties, their attorneys and the catastrophic rehabilitation suppliers.

(1) When a WC-R1 is filed to request a change of registered catastrophic rehabilitation supplier, the current Board appointed rehabilitation supplier shall maintain responsibility for providing necessary rehabilitation services until all appeals have been exhausted, unless excused by the Board.

(3) Any party objecting to a change of catastrophic rehabilitation supplier shall file a WC-Rehab Objection Form setting forth the reasons in support within fifteen (15) days of the date of the certificate of service. The Rehabilitation Division may hold a rehabilitation conference. The Rehabilitation Division will issue an administrative decision on all change of supplier requests.

(I) **Challenges to Administrative Decisions.**

Any party to the claim dissatisfied with an administrative decision must file a WC-14, Request for Hearing, served on all parties and their attorneys and involved rehabilitation supplier(s) within twenty

(20) days of the date of the administrative decision. The Board, in its discretion, may order the parties to participate in a mediation or rehabilitation conference before the scheduling of the de novo hearing. The administrative decision shall be admissible in evidence.

(J) **Failure of a Party or Counsel to Cooperate.**

(1) Benefits may be suspended for failure or refusal to accept or cooperate with authorized rehabilitation services only by order of the Board.

(2) A party or attorney may be subject to civil penalty or to fee suspension or reduction for failure to cooperate with rehabilitation services.

(III) **VOLUNTARY REHABILITATION.**

For non-catastrophic injuries, the parties may elect that the employer/insurer will provide a rehabilitation supplier on a voluntary basis for so long as the parties agree. The employee's consent must be in writing. The rehabilitation supplier utilized by the parties must hold one of the certifications or licenses specified in Rule 200.1(I.A.) and be registered with the State Board of Workers' Compensation.

(A) **Duties of voluntary rehabilitation supplier.**

The voluntary rehabilitation supplier shall simultaneously provide copies of all correspondence, written communications, and documentation of oral communications with the treating physician to all parties and their attorneys.

(B) **Ethical standards required of voluntary rehabilitation supplier.**

The rehabilitation supplier shall adhere to the ethical standards set forth by the approved professional certifying bodies.

(IV) **ADMINISTRATIVE ENFORCEMENT—PROFESSIONAL CONDUCT, FEES AND COMPLIANCE WITH BOARD RULES.**

Complaints against rehabilitation suppliers and medical case managers for revocation or suspension of registration, excessive or fraudulent charges, provision of unnecessary services or unethical or unprofessional behavior shall be filed in writing on a Rehab Complaint with the Director of Managed Care and Rehabilitation with copies sent to all parties and affected suppliers and case managers. Registration may be revoked or suspended, and/or penalties assessed.

(A) The Director of MC shall appoint a peer review panel of nine (9) registered suppliers who will review complaints regarding reasonable fees, appropriate services and unprofessional or unethical be-

haviors. The appointees shall serve for terms of three (3) years and may be re-appointed for a maximum of nine (9) years.

(B) The registration of a medical case manager or a rehabilitation supplier may be revoked or suspended, and/or penalties assessed upon a determination of violation of Board rules, excessive or fraudulent charges, provision of unnecessary services or unethical or unprofessional behavior.

(C) A written complaint against a medical case manager or rehabilitation supplier shall be filed with the Director of MC&R and copies sent to all parties to the case and to the medical case manager or rehabilitation supplier. Upon receipt of the written complaint, or upon the Board's knowledge of a violation, the Director of MC& R shall provide notification to the case manager/rehabilitation supplier by providing a copy of the written complaint.

(D) Within fifteen (15) calendar days of the notice by the Director of MC, the Director shall appoint a panel of three (3) members from the peer review panel to review the complaint. Where possible, at least one of the three (3) shall have the same certification or licensure as the person who is the subject of the complaint. The Director of MC shall provide Review Panel contact information to the complainant and the person who is the subject of the complaint.

(E) The medical case manager or rehabilitation supplier who is the subject of the complaint shall be provided fifteen (15) calendar days from the date of said notice from the Director to provide a written response to the allegations of the complaint. A copy of the response shall be served on the Director of MC&R the Review Panel, and the person who filed the complaint.

(F) The complainant may reply to the response within 10 days by serving a copy on the Director of MC&R, the person who is the subject of the complaint, and the Review Panel.

(G) The Review Panel may request additional information regarding the circumstances of the complaint from any person or party having relevant knowledge. Such additional information shall be provided to the person who is the subject of the complaint who will have 10 days to respond.

(H) The Review Panel shall report its findings and recommendations to the Director of MC&R within thirty (30) days of the final response. The Director of MC shall promptly provide a copy of the findings and recommendations to the medical case manager or rehabilitation supplier who is the subject of the complaint and the complainant.

(I) If the Review Panel determines that there is no inappropriate conduct, the Director of MC&R shall issue an administrative decision

incorporating the Review Panel's findings and recommendation. Copies of the finding shall be sent to all parties to the case and to the medical case manager or rehabilitation supplier who was the subject of the complaint. The complainant or any party dissatisfied with the finding may challenge the finding by filing a WC-14 Request for Hearing within 20 days. The administrative decision shall be admissible in evidence.

(J) If the Review Panel determines that a violation has occurred, the Director of MC&R will refer the findings and recommendation to the Enforcement Division for further appropriate action which may include referral to an Administrative Law Judge for a hearing. If a hearing is held, the Administrative Law Judge shall issue a decision providing for any available remedy, including dismissal of the complaint, assessment of penalties, probation, and/or revocation or suspension of the registration of the rehabilitation supplier. The rehabilitation supplier may appeal the decision of the Administrative Law Judge in accordance with O.C.G.A. § 34-9-103 and § 34-9-105.

(K) The Director of MC shall also have the authority to order replacement of the rehabilitation supplier in the case where the conduct occurred if, in the judgment of the Director of MC&R, such action is necessary to effectuate the purpose of the Act.

(L) When appeals have been exhausted, the Director of MC&R shall report any violations to the appropriate certification or licensing Board.

(M) The members of the peer review panel shall be immune from any subpoena requiring their testimony in any form regarding their participation in the review process.

Note as to revisions. — The revision effective July 1, 2010, substituted "twenty days" for "fifteen days" in the first sentence of divisions (a)(3)(iv) and (a)(5)(vii); substituted the present provisions of division (a)(7)(iii) for the former provisions, which read: "A party may request that the Board close rehabilitation services by filing a written request setting forth the specific reasons in support of their request for closure with copies to all parties and the supplier."; and added paragraph (a)(8).

The revision effective July 1, 2011, substituted "a rehab objection" for "an objection" in the first sentence of division (a)(3)(iii); in division (a)(3)(iv), substituted "a rehab ojection" for "written objections" in the first sentence, and substituted "a rehab objection form" for "written objection" in the last sentence; in division (a)(5)(vii) and paragraph (b)(3), substituted "a rehab objection form" for "a written objection" in the first sentence; and in the first sentence of paragraph (g)(3), substituted "If there are objections, a rehab objection form" for "Any objections" at the beginning, and deleted "in writing" following "Board" in the middle.

The revision effective July 1, 2015, rewrote this rule.

Rule 201. Panel of Physicians.

(a) The employer may satisfy the requirements for furnishing medical care under O.C.G.A. § 34-9-200 in one of the following manners:

(1)(i) A traditional posted panel of physicians shall consist of at least six physicians or professional associations or corporations of physicians who are reasonably accessible to the employees, but is not limited to the minimum of six. However, should a physician on the panel of physicians refuse to provide treatment to an employee who previously has received treatment from another panel physician, the employer/insurer, as soon as practicable, shall increase the panel for that employee by one physician for each such refusal. The Board may grant exceptions to the required size of the panel where it is demonstrated that more than four physicians or groups of physicians are not reasonably accessible. The physicians selected under this subsection from the panel may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require without prior authorization from the Board; provided, however, that any medical practitioner providing services as arranged by a primary authorized treating physician under O.C.G.A. § 34-9-201(b)(1) shall not be permitted to arrange for any additional referrals. The minimum panel shall include an orthopedic physician, and no more than two physicians shall be from industrial clinics. Further, this panel shall include one minority physician. The minority physician so selected must practice within the State of Georgia or be reasonably accessible to the employee's residence. "Minority" shall be defined as a group which has been subjected to prejudice based on race, color, sex, handicap or national origin, including, but not limited to Black Americans, Hispanic Americans, Native Americans or Asian Americans. Failure to include one minority physician on the panel does not necessarily render the panel invalid. The Board reserves the right to allow exceptions when warranted. The employee may make one change from one physician to another on the same panel without prior authorization of the Board. The party which challenges the validity of a panel shall have the burden of proving that the panel violates the provisions of O.C.G.A. § 34-9-201 and Board Rule 201.

(ii) In the event that the Board has granted any exceptions to the panel requirements, all exceptions must be posted at the same location as the panel.

(2) An employer or the workers' compensation insurer of an employer may contract with a workers' compensation managed care organization certified pursuant to O.C.G.A. § 34-9-208 and Board

Rule 208. A "workers' compensation managed care organization" (hereinafter "WC/MCO") means a plan certified by the Board that provides for the delivery and management of treatment to injured employees under the Georgia Workers' Compensation Act. The party which challenges the validity of the WC/MCO panel shall have the burden of proving that the panel violates the provisions herein. An employer utilizing a WC/MCO may satisfy the notice requirements of O.C.G.A. § 34-9-201(c) by posting a notice in prominent places upon the business premises which includes the following information:

(A) The employer has enrolled with the specified WC/MCO to provide all necessary medical treatment for workers' compensation injuries. An employee with an injury prior to enrollment may continue to receive treatment from the non-participating authorized treating physician until the employee elects to utilize the WC/MCO;

(B) The effective date of the WC/MCO;

(C) The geographical service area (by counties);

(D) The telephone number and address of the administrator for the employer and/or WC/MCO who can answer questions about the managed care plan;

(E) How the employee can access care with the WC/MCO and the toll-free 24-hour telephone number of the managed care plan that informs employees of available services.

(b) The employer/insurer cannot restrict treatment of the employee to the panel of physicians or WC/MCO when the claim has been controverted. However, if the controverted claim is subsequently found to be or is accepted as compensable, the employee is authorized to select one of the physicians who has provided treatment for the work-related injury prior to the finding or acceptance of compensability, and after notice has been given to the employer, that physician so selected becomes the authorized treating physician. The employee may thereafter make one change from that physician to another physician without approval of the employer and without an order of the Board. However, any further change of physician or treatment must be in accordance with O.C.G.A. § 34-9-200 and Board Rule 200.

(c) When a case has not been controverted but the employer fails to provide any of the procedures for selection of physicians as set forth in O.C.G.A. § 34-9-201(c), the employee is authorized to select a physician who is not listed on the employer's posted panel of physicians or WC/MCO. After notice has been given to the employer, that physician so selected becomes the authorized treating physician, and the employee may make one change from that physician to another physician without

approval of the employer and without an order of the Board. However, any further change of physician or treatment must be in accordance with O.C.G.A. § 34-9-200 and Board Rule 200.

(d) A party requesting a change of physician must do so in the manner prescribed by Board Rule 200.

Note as to revisions. — The revision effective July 1, 2015, rewrote subparagraph (a)(1)(i), deleted paragraph (a)(2), redesignated former (a)(3) as present paragraph (a)(2), and deleted ", conformed panel of physicians," following "panel of physicians" in the first sentences of subsections (b) and (c).

Rule 202. Examinations.

(a) Examinations contemplated by O.C.G.A. § 34-9-202 shall include physical, psychiatric and psychological examinations. An examination shall also include reasonable and necessary testing as ordered by the examining physician.

(b) The examining physician may require prepayment pursuant to the Fee Schedule base amount for up to the first two hours ($1200.00). Payment for any additional charges pursuant to the Fee Schedule shall be due within 30 days of receipt of the report and charges by the employer/insurer.

(c) The employer shall give ten days written notice of the time and place of any requested examination. Advance payment of travel expenses required by Rule 203(e) shall accompany such notice.

(d) The employer/insurer shall not suspend weekly benefits for refusal of the employee to submit to examination except by order of the Board.

(e) Within 120 days of the employee's receipt of any income benefits, the employee shall provide written notice to the employer/insurer of his/her intent to exercise the right to have a one-time independent medical examination at a reasonable time and place.

Note as to revisions. — The revision effective July 1, 2009, substituted "($600.00)" for "($500.00)" in the first sentence of subsection (b).

The revision effective July 1, 2012, added subsection (e).

The revision effective July 1, 2015, substituted "for up to the first two hours ($1200.00)" for "for the first two hours ($600.00)" in the first sentence of subsection (b).

Rule 203. Payment of Medical Expenses; Procedure When Amount of Expenses is Disputed.

(a) Medical expenses shall be limited to the usual, customary and reasonable charges as found by the Board pursuant to O.C.G.A. § 34-9-205. Employer/insurers may automatically conform charges

according to the fee schedule adopted by the Board and the charges listed in the fee schedule shall be presumed usual, customary, and reasonable and shall be paid within 30 days from the date of receipt of charges. Requests for reimbursement of mileage expenses incurred by the employee shall be paid within 15 days after receipt of an itemized written request. Employer/insurers shall not unilaterally change any CPT-4 code of the provider. All automatically conformed charges according to the fee schedule adopted by the Board shall be for the CPT-4 code listed by the provider. In situations where charges have been reduced or payment of a bill denied, the carrier, self-insured employer, or third party administrator shall provide an Explanation of Benefits with payment information explaining why the charge has been reduced or disallowed, along with a narrative explanation of each Explanation of Benefits code used. In all claims, any health service provider whose fee is reduced to conform to the fee schedule and who disputes that fee, or employer/insurers who dispute the CPT-4 code used by the provider for services rendered shall, in the first instance, request peer review of the charges, and may thereafter request a mediation conference or an evidentiary hearing by filing Form WC-14 with the Board. For charges not contained in the fee schedule and which are disputed within 30 days as not being reasonable, usual and customary, the aggrieved party shall follow the procedures provided in subsection (c).

(b)(1) A medical provider or an employee who has incurred expenses for healthcare goods and services or other medical expenses shall submit the charges to the employer or its workers' compensation carrier for payment within one year of the date of service. In the event that the claim or the expense is controverted, the medical expenses or request for reimbursement must be submitted for payment within one year of the date of service or within one year of the date that the claim is accepted or established as compensable, whichever is later. Failure by the medical provider or employee to submit expenses within the time prescribed shall result in waiver of such expenses.

(2) Any challenge by a medical provider to the amount of payment for goods, services, or expenses shall be submitted to the payer within 120 days of payment. Failure by a medical provider to challenge the amount of payment of such goods, services, or expenses within 120 days shall result in the waiver of additional payment.

(c) Disputes

(1) An employer or insurer shall pay when due all charges deemed reasonable, and follow the procedures set forth in subsection (2) for review of only those specified charges which are disputed.

(2) For charges not contained in the fee schedule and which are disputed as not being the usual, customary and reasonable charges

prevailing in the State of Georgia, the employer, insurer, or physician shall file a request for peer review with a peer review organization authorized by the Board within 30 days of the receipt of charges by the employer/insurer, and shall serve a copy of the request and supporting documentation upon all parties and counsel. A request for peer review of chiropractic charges or treatment shall attach to the application 10 copies of the charges and all of the reports dealing with the treatment of the injured employee.

The peer review organizations approved by the Board are as follows: Georgia Psychological Association; Georgia Chiropractic Association, Inc.; Appropriate Utilization Group, LLC; Dane Street and such other organizations as designated by the Board.

(3) Unless peer review is requested as set forth in Rule 203 (c)(2), all reasonable charges for medical, surgical, hospital and pharmacy goods and services shall be payable by the employer or its worker's compensation insurer within 30 days from the date that the employer or the insurer receives the charges and the medical reports required by the Board or within 15 days after receipt of an itemized written request for mileage incurred by the employee. Failure of the health care provider to include with submission of charges the reports or other documents required by the Board, constitutes a defense for the employer or insurer's failure to pay the submitted charges within 30 days of receipt or within 15 days of receipt of an itemized written request for mileage incurred by the employee; however, the employer or insurer must submit to the health care provider written notice indicating the need for further documentation within 30 days of receipt of the charges or within 15 days of an itemized written request for mileage incurred by the employee and failure to do so will be deemed a waiver of the right to defend a claim for failure to pay such charges in a timely fashion on the ground that the charges were not properly accompanied by required documentation. Such waiver shall not extend to any other defense the employer and insurer may have with respect to a claim of untimely payment.

If any charges for health care goods or services are not paid when due, or any reimbursement for health care goods or services paid by the employee or any charges for mileage incurred by the employee are not paid when due, penalties shall be added to such charges and paid at the same time as, and in addition to, the charges claimed for the health care goods and services. For any payment of charges made more than 30 days after their due date, but paid within 60 days of such date, there shall be added to such charges an amount equal to 10 percent of the amount due. For any payment of charges made more than 60 days after the due date, but paid within 90 days of such date, there shall be added to such charges an amount equal to 20 percent

of the amount due. For any charges not paid within 90 days of the due date, in addition to the 20 percent add-on penalty, the employer or insurer shall pay interest on the combined total in an amount equal to 12 percent per annum from the 91st day after the date the charges were due until full payment is made. All such penalties and interest shall be paid to the provider of the health care goods or services.

(4) The employer, insurer, or physician requesting review must comply with the requirements of the statute, Board Rules, and rules of the appropriate peer review organization before the Board will rule on any disputed charges.

(5) If there is no appropriate peer review organization, the party requesting review may request a mediation conference by filing Form WC-14 with the Board. The charges submitted which conform to the list as published by the Board shall be prima facie proof of the usual, customary, and reasonable charges for the medical services provided.

(6) The employer/insurer shall, within 30 days from the date that a decision regarding the peer review of charges or treatment is issued by a peer review organization, make payment of disputed charges based upon the recommendations, or request a mediation conference or an evidentiary hearing. The peer review organization shall serve a copy of its decision upon the employee if unrepresented, or the employee's attorney. A physician whose fee has been reduced by the peer review organization shall have 30 days from the date that the recommendation is mailed to request a mediation or hearing. In the event of a hearing or mediation conference, the recommendations of the peer review organization shall be evidence of the usual, customary, and reasonable charges.

(7) In cases where the peer review organization recommends that the fee be reduced, the employer/insurer shall pay the physician the fee amount recommended by the peer review organization less the fee for peer review initially paid by the employer/insurer. In the event the peer review organization recommends the entire fee be disallowed, the employer/insurer may automatically deduct the fee for the peer review from future allowable expenses submitted by the physician for treatment or services rendered to the employee arising out of the same injury.

(d) Medical expenses shall include the reasonable cost of attendant care that is directed by the treating physician, during travel or convalescence.

(e) Medical expenses shall include but are not limited to the reasonable cost of travel between the employee's home and the place of examination or treatment or physical therapy, or the pharmacy. When travel is by private vehicle the rate of mileage shall be 40 cents per mile.

This rate is subject to change based upon changes in fuel costs. Reimbursement for any charges for mileage incurred by the employee shall be paid within 15 days from the date that the employer or the insurer receives the itemized written request required by the Board. Travel expenses beyond the employee's home city shall include the actual cost of meals and lodging. Travel expenses shall further include the actual cost of meals when total elapsed time of the trip to obtain outpatient treatment exceeds four hours. Cost of meals shall not exceed $30 per day.

Note as to revisions. — The revision effective July 1, 2010, deleted the former last sentence of the second paragraph of paragraph (c)(2), which read: "A request for peer review of any other treatment or charges shall attach to the application two copies of the charges and all of the reports dealing with the treatment of the injured employee."

The revision effective July 1, 2011, deleted "Medical Directors Solutions, LLC;" preceding "Georgia Psychological Association" in the concluding paragraph of paragraph (c)(2).

The revision effective July 1, 2013, added the third sentence in subsection (a); inserted "or employee" in the last sentence of paragraph (b)(1); substituted "payer" for "payor" in the first sentence of paragraph (a)(2); in paragraph (c)(3), inserted "or within 15 days of an itemized written request for mileage incurred by the employee" three times, and deleted "its" preceding "submission" in the second sentence; in the ending paragraph of subsection (c), inserted "or any reimbursement for health care goods or services paid by the employee or any charges for mileage incurred by the employee are not paid when due" in the first sentence, and substituted "percent" for "%" in the second, third, and fourth sentences; and added the fourth sentence in subsection (e).

The revision effective July 1, 2014, substituted the present provisions of the undesignated paragraph of paragraph (c)(2) for the former provisions, which read: "The peer review committees approved by the Board are as follows: Georgia Psychological Association; Georgia Chiropractic Association, Inc.; Appropriate Utilization Group, LLC; and such other committees as the Board has posted as so designated at its Atlanta office."

The revision effective July 1, 2015, substituted "peer review organization" for "peer review committee" throughout; in paragraph (c)(2), deleted "; Exam Works" following "Dane Street", in paragraph (c)(7), substituted "fee for per review" for "filing costs", substituted "organization" for "committee" and substituted "fee" for "filing costs".

Rule 205. Necessity of Treatment; Disputes Regarding Authorized Treatment.

(a) Reports required by the Board include State Board of Workers' Compensation Form WC-20(a), 1500 Claim Form, or UB-04 and supporting narrative, if any, properly filled out and with supporting itemized hospital charges, discharge summary, and billings from other authorized providers of service and shall be furnished at no charge to the party responsible for payment. In addition, health care providers may submit and payers may receive and pay bills for medical services and products provided to the injured employee electronically in accordance with the Medical Billing and Reimbursement for Workers' Compensation procedures outlined in an Appendix to the Georgia Fee Schedule. Medical services provided pursuant to the Workers' Compen-

sation Act are not confidential to the employer/insurer who by law are responsible for the payment of services. Hospitals and other medical providers who by their own rules require medical releases shall be responsible for obtaining same at the time of treatment.

(b)(1) Medical treatment/tests prescribed by an authorized treating physician shall be paid, in accordance with the Act, where the treatment/tests are:

(a) Related to the on the job injury;

(b) Reasonably required and appear likely to accomplish any of the following:

(1) Effect a cure;

(2) Give relief;

(3) Restore the employee to suitable employment;

(4) Establish whether or not the medical condition of the employee is causally related to the compensable accident.

(2) Advance authorization for the medical treatment or testing of an injured employee is not required by this Chapter as a condition for payment of services rendered. A Board certified WC/MCO may provide for pre-certification by contract with network providers pursuant to O.C.G.A. § 34-9-201(b)(3).

(3)(a) An authorized medical provider may request advance authorization for treatment or testing by completing Sections 1 and 2 of Board Form WC-205 and faxing or emailing same to the insurer/self-insurer, along with supporting medical documentation. The insurer/self-insurer shall respond by completing Section 3 of the WC-205 within five (5) business days of receipt of this form. The insurer/self-insurer's response shall be by facsimile transmission or email to the requesting authorized medical provider. If the insurer/self-insurer fail to respond to the WC-205 request within the five business day period, the treatment or testing stands pre-approved.

(b) In the event the insurer/self-insurer furnish an initial written refusal to authorize the requested treatment or testing within the five business day period, then within 21 days of the initial receipt of the WC-205, the insurer/self-insurer shall either: (a) authorize the requested treatment or testing in writing; or (b) file with the Board a Form WC-3 controverting the treatment or testing indicating the specific grounds for the controversion.

(c)(1) If medical treatment is controverted on the ground that the treatment is not reasonably necessary, the burden of proof

shall be on the employer. If the treatment is controverted on the grounds that the treatment is either not authorized or is unrelated to the compensable injury, the burden of proof shall be upon the employee.

(2) In the event of a dispute as to the necessity and/or reasonableness of services already rendered, the procedure listed in Board Rule 203(c) shall be followed.

(d) If an employer or insurer utilizes a Board certified WC/MCO pursuant to O.C.G.A. § 34-9-201(b)(3), and a dispute arises regarding the treatment/test prescribed by the authorized treating physician and the dispute is not resolved within 30 days as outlined in Rule 208(f), then the employer or insurer has 15 days from notification by the WC/MCO to authorize the treatment/test or controvert the treatment/test. In no event will the employer or insurer utilizing a WC/MCO have more than 45 days from the receipt of the notice of a dispute as set forth in Rule 208(f) to comply with this provision.

(4) Where the employer fails to comply with Rule 205(b)(3), the employer shall pay for the treatment/test requested related to the compensable injury in accordance with the Chapter.

Note as to revisions. — The revision effective July 1, 2009, inserted ", along with supporting medical documentation" at the end of the first sentence in subparagraph (b)(3)(a).

The revision effective July 1, 2010, added the second sentence in subsection (a).

The revision effective July 1, 2011, in paragraph (b)(4), deleted ", in accordance with the Chapter," following "shall pay" and added "related to the compensable injury in accordance with the Chapter" at the end.

The revision effective July 1, 2014, substituted "1500 Claim Form" for "HCFA 1500" in the first sentence of subsection (a).

Rule 206. Reimbursement of Group Carrier or Other Healthcare Provider.

(a) Only a party to a claim, a group insurance company or other healthcare provider who covers the costs of medical treatment or provides medical services to the employee may file a Form WC-206

(b) Form WC-206, shall include supporting documentation and an explanation of any dispute and shall be submitted to the Board by the party seeking reimbursement during the pendency of the claim. Copies shall also be sent by the party requesting reimbursement to all counsel and unrepresented parties at interest.

(c) When the Board receives a request for reimbursement and designation as a party at interest, the Board will provide the requesting party with notice of any hearing at which the party at interest will be permitted to present evidence of its claimed interest.

Note as to revisions. — The revision effective July 1, 2011, added subsection (a) and redesignated former subsections (a) and (b) as present subsections (b) and (c); and, in subsection (b), substituted "shall include supporting documentation and shall" for "including supporting documentation, shall" in the first sentence.

The revision effective July 1, 2012, inserted "and an explanation of any dispute" in the first sentence of subsection (b).

The revision effective July 1, 2013, added "at which the party at interest will be permitted to present evidence of its claimed interest" at the end of subsection (c).

The revision effective July 1, 2014, in subsection (c), substituted "When the Board" for "If a hearing request is pending when the Board" and substituted "any hearing" for "the hearing".

Rule 221. Method of Payment.

(a) Payment shall be made to the address of record or account specified by the claimant, in cash, by negotiable instrument, or upon agreement of the parties by electronic funds transfer. Payment by negotiable instrument shall denote the pay period which the payment represents. Mailed payments shall be sent to the claimant in accordance with the procedure prescribed by O.C.G.A. § 34-9-221(b).

(b) For the purpose of calculating time periods, the date of injury shall be deemed to be the date of disability and a week shall be deemed to be seven calendar days. See Rule 220(a).

(c) In all cases, including payment of salary for compensable disability, upon making the first payment and upon suspension of payment, Forms WC-1 or WC-2 or, in case of death, Form WC-2A shall be filed with the Board. If the Forms WC-1 or WC-2 show payment is less than the maximum weekly benefit under either O.C.G.A. § 34-9-261 or O.C.G.A. § 34-9-262, as applicable, a Form WC-6 or other sufficient explanation shall be filed with the Board with the accompanying Form WC-1 or WC-2. To report any change in weekly benefits, payment of salary during period of compensability, classification, or rating of disability, a Form WC-2 shall be filed with the Board. An injured employee who receives regular wages during disability shall not be entitled to weekly benefits for the same period.

(d) To controvert in whole or in part the right to income benefits or other compensation, use Forms WC-1 or WC-3. Failure to file the Forms WC-1 or WC-3 before the 21st day after knowledge of the injury or death may subject the employer/insurer to an assessment of penalties or attorney's fees. See paragraphs (2) and (3) of subsection (b) of O.C.G.A. § 34-9-108.

(e) Any penalty for late payment shall be stated as a separate item on Forms WC-1, WC-2 or WC-2A.

(f) Accrued benefits payable under the terms of an award are due on the date the award is issued.

(g) Within 30 days after final payment of compensation, a final Form WC-4 shall be filed with the Board.

(h) Subsection (h) of O.C.G.A. § 34-9-221 applies only when income benefits are being paid under Forms WC-2, WC-2A, or subsection B of Form WC-1. To suspend payment on the ground of a change in condition, file Forms WC-2 or WC-2A.

(1) A Form WC-3 shall not be used to suspend benefits where the only issue is length of disability. In these cases, suspend benefits by filing a Form WC-2 or follow procedure outlined in Rule 240. If liability is denied subsequent to commencement of payment, but within 60 days of due date of first payment of compensation, file Form WC-3 in addition to a Form WC-2.

(2) If income benefits have been continued for more than 60 days after the due date of first payment of compensation, benefits may be suspended only on the grounds of a change in condition or newly discovered evidence. File Forms WC-2 or WC-2A. When controverting a claim based on newly discovered evidence, file Form WC-3 also.

(i)(1) Suspension of benefits at any time on the ground of change in condition requires advance notice of 10 days unless the employee has actually returned to work.

(2) The date of filing with the Board, in the absence of compelling evidence to the contrary, shall be considered the date of notice.

(3) The date affixed by the Board to Forms WC-2 or WC-2A, in the absence of compelling evidence to the contrary, shall be considered the date of notice.

(4)(a) When suspending benefits for release to return to work without restrictions, the employer/insurer shall attach to the Form WC-2 a copy of the supporting medical report from employee's authorized treating physician, who must have examined the employee within sixty days of the effective date of the release.

(b) If suspending benefits for release to return to work without restrictions, and if filing via EDI, section (i)(4)(a) shall be followed and the employer/insurer shall simultaneously mail to, or electronically file with, the Board the filed Subsequent Report of Injury (SROI) or Form WC-2 and a copy of the supporting medical report from employee's authorized treating physician. Pursuant to Board Rule 60(c), all documents filed with the Board shall contain the employee's name, date of injury, and Board claim number. Any document that does not contain this information shall be rejected by the Board. Copies of all filings shall be served on the employee and the employee's attorney, if represented. If service is performed

by regular mail to the employee, three additional days shall be added to the prescribed notice period.

Note as to revisions. — The revision effective July 1, 2009, designated the existing provisions of paragraph (i)(4) as subparagraph (i)(4)(a), and added subparagraph (i)(4)(b).

The revision effective July 1, 2011, inserted "funds" in the first sentence of subsection (a).

Rule 222. Time Limit for Application for Lump Sum Payment.

(a) The Board will consider an application for a lump sum payment of all remaining income benefits or a lump sum advance of a portion of the remaining income benefits, but will not consider any application unless benefits have been continued for at least 26 weeks. The employer/insurer may make a lump sum payment or lump sum advance without commutation of interest and without an award from the Board.

(b) In lieu of a hearing, the Board will consider applications for lump sum advances and lump sum payments in accordance with the following procedure:

(1) A request for a lump sum advance or lump sum payment must be submitted on Form WC-25, and a copy must be sent to the employer/insurer and any other interested parties. The request will not be granted unless the current Form WC-25 is completely filled out with appropriate supporting documents as directed on the form.

(2) The parties have 15 days from the date of the certificate of service to file objections to the application. Objections to applications for lump sum advances shall be submitted on Form WC-25 and must be accompanied by documents in support of the objections, may be accompanied by counter-affidavits, and must be served upon the party or the attorney making the application. A certificate of service must accompany the objections attached.

(3) If any party elects to cross-examine an adverse party, it must notify the Board within 15 days of the date of the certificate of service of the Form WC-25 of its intention to submit a deposition. The deposition must be filed with the Board no later than 30 days from the certificate of service on the Form WC-25, unless an extension is granted by the Board upon a showing of just cause.

(4) If, in the judgment of the Board, there are material and bona fide disputes of fact, the Board may schedule a hearing or assign the case to an Administrative Law Judge for the purpose of receiving evidence, or schedule a mediation conference on the issues.

(5) The maximum amount of attorney fees which will be awarded in conjunction with an advance will be 25 percent of the amount of the

advance or $500.00, whichever is less, unless specifically authorized by the Board. In the event the attorney obtaining the advance has a fee contract that has been previously approved by order or award of the Board, attorney fees will be authorized in accordance with the terms of the order or award.

Note as to revisions. — The revision effective July 1, 2014, substituted "Objections to applications for lump sum advances shall be submitted on Form WC-25 and" for "Objections to an application" at the beginning of the second sentence of paragraph (b)(2).

Rule 226. Procedures for Appointing Conservator for Minor or Incompetent Adult.

(a) A petition for the Board to appoint a temporary conservator to bring or defend an action under this chapter and/or receive and administer workers' compensation benefits for a minor or incompetent adult should be filed with the Board at the time the WC-14 is filed. In the case of any stipulated settlement, a conservatorship petition shall be filed prior to, and separately from, the filing of a stipulated settlement agreement.

If payment to the minor or incompetent adult is pursuant to a WC-2, the conservatorship petition should be filed with the Board and a conservator appointed prior to the payment of any monetary benefits to them.

(b) Any applicant for conservatorship shall consent to a criminal history record check via a Form WC-226(a) or Form WC-226(b) at the time the petition for conservatorship is submitted to the Board. In addition, the applicant shall attach supporting documentation necessary to process the request.

(c) If a petition is filed on behalf of a minor child or children, the petitioner shall inform, in writing, the Board whether the minor child or children reside with the petitioner.

(d) If a petition is filed with the Probate Court or any other court, the parties are directed to immediately notify, in writing, the Board. If the Probate Court or any other court appoints a conservator, the parties shall file a copy of the order with the Board.

(e)(1) All objections shall be made on Form WC-102D. When attaching documents as evidence to objections, do not use tabs to separate documents.

(2) Any party or attorney filing a request or an objection shall also serve a copy on all counsel and unrepresented parties, along with supporting documents, including a separate certificate of service identifying the names and addresses served.

(3) When filing a motion for reconsideration, the parties or attorneys shall: (1) immediately notify the Board or assigned Administrative Law Judge by telephone call; (2) use the ICMS doc-type labeled motion for reconsideration; and (3) serve a copy on all counsel and unrepresented parties, along with supporting documents, including a separate certificate of service identifying the names and addresses served.

Note as to revisions. — The revision effective July 1, 2008, in paragraph (b), substituted "shall consent to a criminal history check via a Form WC-226(a) or Form WC-226(b)" for "must submit a consent for proof of a criminal history check" in the first sentence, and deleted the former second sentence, which read: "When the petitioner resides, or has resided, in a jurisdiction other than Georgia within the five years prior to the date of the petition for guardianship, the petitioner must submit a certified copy or other proof of a criminal history record check from all jurisdictions of residence."; and added subsection (e).

The revision effective July 1, 2009, in subsection (a), deleted the former last sentence which read: "In the case of a stipulated settlement, the guardianship petition should be filed prior to or at the time of the filing of the stipulated settlement agreement." and added the present last sentence.

The revision effective July 1, 2012, substituted "conservator" for "guardian" and "conservatorship" for "guardianship" in subsections (a), (b), and (d).

Rule 240. Offer of Suitable Employment.

(a) For suspension and reinstatement of income benefits by interlocutory order generally, see Board Rule 102D.

(b) When an employee unjustifiably refuses to accept employment which has been approved by the authorized treating physician(s) suitable to his/her impaired condition and offered to the employee in writing, the employer/insurer may suspend payment of income benefits to that employee without an order of the Board in the following manner:

(1) File with the Board a Form WC-2 and Form WC-240 certifying that at least ten days before the employee was required to report for work he/she was notified on the completed Form WC-240 mailed to the employee and his/her attorney that there was a suitable job available, that it was approved by his/her authorized treating physician(s) after an examination within the last 60 days, and refusal to attempt to perform the job would result in the suspension of payment of weekly income benefits to the employee. The employer/insurer shall provide to the employee and legal counsel a copy of any job description/analysis in reference to subparagraph (3)(i), (ii) and (iii) at the time of submission to the authorized treating physician(s).

(2) If filing via EDI, section (b)(1) shall be followed and the employer/insurer shall simultaneously mail to, or electronically file with, the Board the filed Subsequent Report of Injury (SROI) or Form WC-2 and a copy of the served Form WC-240 and supporting medical

report from employee's authorized treating physician. Pursuant to Board Rule 60(c), all documents filed with the Board shall contain the employee's name, date of injury, and Board claim number. Any document that does not contain this information shall be rejected by the Board. Copies of all filings shall be served on the employee and the employee's attorney, if represented.

(3) Attached to the Form WC-240 shall be:

(i) A description of the essential job duties to be performed, including the hours to be worked, the rate of payment, and a description of the essential tasks to be performed;

(ii) The written approval of the authorized treating physician(s) of the essential job duties to be performed;

(iii) The location of the job, with the date and time that the employee is to report to work.

Attaching a properly completed Form WC-240A will satisfy the requirements for making a proper offer of employment as set forth herein.

(4) If the employee attempts the proffered job for less than eight cumulative hours or one scheduled workday, whichever is greater, or refuses to attempt to perform the proffered job after receiving the above notification, the employer/insurer shall be authorized to suspend payment of income benefits to the employee effective the date that they unjustifiably refused to report to work.

(c) Should the employee accept the employment offered by the employer/insurer and attempt the proffered job for eight cumulative hours or one scheduled workday, whichever is greater, but fail to continue working for more than the prescribed fifteen (15) scheduled work days, the employer/insurer, whether or not they have sent a WC-240, shall immediately reinstate payment of income benefits and shall file with the Board and serve upon the employee the appropriate Form WC-2 reflecting the reinstatement of income benefits.

(i) Failure to immediately reinstate benefits pursuant to Board Rule 240 (c), shall result in the waiver of the employer/insurer's defense of the suitability of employment for the period of time the employer/insurer did not pay the employee's weekly income benefits when due.

(ii) When the employer/insurer immediately reinstates benefits pursuant to Board Rule 240 (c), the employer/insurer are entitled to seek reimbursement of such benefits at a hearing addressing the suitability of the proffered employment

(d) When calculating the fifteen (15) scheduled work days provided by statute, the employer/insurer shall include as a work day each day or

part thereof during which the employee is scheduled to perform his/her job duties.

(e) The employer/insurer shall also be entitled to suspend payment of weekly benefits to the employee pending a hearing by an order of the Board finding an unjustifiable refusal of the employee to accept employment procured for him/her suitable to his/her capacity. A motion requesting this order may be made simultaneously with the filing of a request for hearing or at any time during the pendency of the hearing and award and shall be filed on Form WC-102D, and must be accompanied by an affidavit from the employer setting forth that suitable employment has been offered to the employee as set forth in (b) above, the offer is continuing, and analysis of the job is attached. The employer/insurer shall have the employee examined by the authorized treating physician(s) within 60 days prior to this request for suspension of income benefits. No request for suspension of income benefits for failure to accept suitable employment shall be granted unless the authorized treating physician(s) approve(s) the job offered by the employer/insurer. A party who objects to this motion shall file their response on Form WC-102D with the Board within 15 days of the date of the certificate of service on the request, and shall serve a copy on all counsel and unrepresented parties.

(f) The Board may also issue an interlocutory order reinstating weekly income benefits pending a hearing. A party making this motion shall file Form WC-102D, and shall serve a copy, along with a copy of supporting documents, on all counsel and unrepresented parties. A motion requesting this order may be made simultaneously with the filing of a request for hearing based on a change in condition or at any time during the pendency of the hearing and award and must be accompanied by an affidavit of the employee setting forth his contentions, along with current medical records when applicable. A party who objects to this motion shall file Form WC-102D with the Board within 15 days of the date of the Certificate of Service on Form WC-102D and shall serve a copy on all counsel and unrepresented parties.

(g) In the event the employee's weekly benefits are suspended pursuant to O.C.G.A. 34-9-240(b)(2), the employer/insurer shall comply with O.C.G.A. 34-9-263 and Board Rule 263.

Note as to revisions. — The revision effective July 1, 2009, added paragraph (b)(2), and redesignated former paragraphs (b)(2) and (b)(3) as present paragraphs (b)(3) and (b)(4), respectively.

The revision effective July 1, 2011, substituted "subparagraph (3)(i)" for "subparagraph (2)(i)" in the last sentence of paragraph (b)(1).

The revision effective July 1, 2013, inserted "attempts the proffered job for less than eight cumulative hours or one scheduled workday, whichever is greater, or" near the beginning of paragraph (b)(4); and inserted "and attempt the proffered job for eight cumulative hours or one scheduled workday, whichever is greater," near the beginning of subsection (c).

Rule 244. Reimbursement for Payment of Disability Benefits.

(a) A provider of disability benefits who requests reimbursement shall file Form WC-244 with the Board, and shall serve a copy on all counsel and unrepresented parties.

(b) Form WC-244 shall provide supporting documentation including the policy/plan provision authorizing the provider to obtain reimbursement and an explanation of any dispute and shall be submitted to the Board by the party seeking reimbursement during the pendency of the claim.

Note as to revisions. — The revision effective July 1, 2012, designated the existing provisions as subsection (a) and added subsection (b).

Rule 381. Definitions as used in this Article.

(a) "Applicant" means an employee entitled to workers' compensation benefits.

(b) "Board" means the State Board of Workers' Compensation.

(c) "Board of trustees" means the Board of trustees of the Fund.

(d) "Fund" means the Self-Insurers Guaranty Trust Fund.

(e) "Insolvent self-insurer" means a self-insurer who files for relief under the Federal Bankruptcy Act, a self-insurer against whom involuntary bankruptcy proceedings are filed, or a self-insurer for whom a receiver is appointed in a federal or state court of this or any other jurisdiction or a self-insurer who is determined by the Board to be in default of its workers' compensation obligations or requirements according to rules and regulations promulgated by the Board of trustees and approved by the Board.

(f) "Participant" means a self-insurer who is a member of the Fund.

(g) "Self-insurer" means a private employer, including any hospital authority created pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law," that has been authorized to self-insure its payment of workers' compensation benefits pursuant to this Chapter, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, or captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter.

(h) "Trustee" means a member of the Self-Insurers Guaranty Trust Fund Board of Trustees.

Note as to revisions. — The revision effective July 1, 2010, substituted "or a self-insurer who is determined by the Board to be in default of its workers' compensation obligations or requirements according to" for "and who is determined to be insolvent by" in subsection (e).

Rule 382. Purpose.

(a) The purpose of creating a Self-Insurers Guaranty Trust Fund is to make payments in accordance with this chapter for the benefit of workers injured on the job in the event a participant becomes insolvent. The Fund shall be administered by an administrator appointed by the Chairperson of the Board of trustees with approval of the Board of trustees. Monies in the Fund will be invested by the Board of trustees in the same manner as provided by law for investments in government backed securities.

(b) All returns on investment shall be retained by the Fund. In addition to paying benefits, and administrative fees, operating costs of the fund, attorneys' fees incurred by the Board of trustees and other costs reasonably incurred by the Board will be paid from this Fund.

(c) As a condition of self-insurance all private employers must make application and be accepted in the Self-Insurers Guaranty Trust Fund.

(d) Self-insurers must give written notice to the Board when they add or delete subsidiaries, affiliates, divisions or locations to their self-insurance certificate, or make any changes in their excess insurance policies. (See Rule 126(c).)

Note as to revisions. — The revision effective July 1, 2009, deleted "addressed to the Director of Licensure and Quality Assurance" preceding "when they add" in subsection (d).

The revision effective July 1, 2010, substituted "Chairperson" for "Chairman" in the last sentence of subsection (a); substituted "costs of the fund" for "costs of the Board of trustees" in subsection (b); and substituted "all private employers" for "a private employer" in subsection (c).

Rule 383. Board of Trustees; How Appointed.

(a) Each member of the Board of trustees shall be an employee of a participant. The Board of trustees shall consist of a chairperson and six trustees elected by the participants. The Board of trustees shall initially be appointed by the Governor not later than August 1, 1990. Three of the initial trustees shall be appointed for terms of office which shall end on January 1, 1993, and the chairperson and the three other initial trustees shall be appointed for terms of office which shall end on January 1, 1995. Thereafter, each trustee shall be elected to a four-year term and shall continue to serve unless otherwise ineligible under subsection (b) of this Code section. No later than 90 days prior to the end of any member's term of office, the chairperson shall select a nominating committee from among the participants to select candi-

dates for election by the participants for the following term. In the event the chairperson fails to complete his or her term of office, a successor will be elected by the Board of trustees to fill the unexpired term of office.

(b) A vacancy in the office of the Board of trustees shall occur for the following reasons:

(1) Resignation;

(2) Death;

(3) Conviction of felony;

(4) Employer no longer qualifies as a self-insured participant;

(5) Trustee is no longer an employee of the participant.

(c) The Board of trustees may remove any trustee from office for:

(1) Formal finding of incompetence;

(2) Neglect of duty; or

(3) Malfeasance in office.

(d) The Board of trustees, within 30 days after the office of any elected member becomes vacant, shall elect a successor for the unexpired term.

Note as to revisions. — The revision effective July 1, 2010, substituted "any trustee" for "any member" in the introductory language of subsection (c).

Rule 384. Powers of the Board of Trustees.

The Board of trustees shall possess all powers necessary to accomplish objectives prescribed in this article including the following:

(a) Submit to the Board, for approval within 90 days from appointment, bylaws, rules, regulations, resolutions and application fee of $500.00. Board of trustees may carry out its responsibilities by contract or other instrument; may purchase services, borrow money, purchase excess insurance, levy penalties and fines, and collect funds necessary to effectuate its activities. The Board of trustees shall appoint, retain and employ staff necessary to achieve the purposes of the Board of trustees with expenses incurred paid from the Fund.

(b) The Board of trustees shall meet quarterly or upon the call of the chairman issued to the trustees in writing not less than 48 hours prior to the day and hour of the meeting; upon a request submitted to the chairman 72 hours prior to the proposed day and hour by a majority of the trustees whereupon the chairman will provide notice as set forth above or by unanimous written agreement of the trustees.

(c) Four trustees constitute a quorum.

(d) The Board of trustees shall serve without compensation; each member will be entitled to reimbursement for actual expenses incurred in the discharge of his official duties.

(e) The Board of trustees shall have the right to bring and defend actions in the name of the Fund. The administrator, the trustees, employers, agents, and employees shall not be liable jointly or individually for matters arising from or out of authorized conduct of the Fund in accordance with this article.

Note as to revisions. — The revision effective July 1, 2010, substituted "The administrator, the trustees, employers, agents, and employees shall not be liable jointly or individually" for "Neither trustees nor their employers shall be liable" in the second sentence of paragraph (e).

Rule 385. Participant Filing for Relief Under the Federal Bankruptcy Act.

(a) Within 30 days of the occurrence of filing for relief under the Federal Bankruptcy Act or against whom bankruptcy proceedings are filed or for whom a receiver is appointed, the participant shall file a written notice with the Board and the Board of trustees.

(b) Any person filing an application for adjustment of a claim against a participant who has filed for relief under the Federal Bankruptcy Act, or against whom bankruptcy proceedings have been filed or a receiver appointed must file a written notice with the Board and the Board of trustees within 30 days of such person's knowledge.

(c) Upon receipt of any notice as provided in subsections (a) and (b) of this Code Section, the Board of trustees shall refer for investigation all facts, circumstances, and information in its possession to a properly designated authorized certified public accountant for determination of the question of insolvency according to generally accepted accounting principles. Upon receipt of the notice referenced herein, a participant shall be required to execute a release of any and all financial information, banking records, books of account, tax returns or other records determined by the Board of trustees to be necessary in making a determination of insolvency and the participant shall assist in the production of said information when requested to do so by the Board of trustees.

(d) When a participant is determined to be an insolvent self-insurer, the Board of trustees is empowered and shall assume on behalf of the participant the following:

(1) Outstanding workers' compensation obligations excluding penalties, fines and claimant's attorney fees assessed pursuant to § 34-9-108(b).

(2) Responsibility for taking necessary steps to collect, recover, and enforce all outstanding security, indemnity, insurance, or bonds for the purpose of paying outstanding obligations of participants.

(3) Refunding any funds remaining from such security to the appropriate party one year from the date of final payment, provided no liabilities remain against the Fund.

(e) The fund shall be a party in interest in all proceedings in the payment of workers' compensation claims for a participant and shall be subrogated to the rights of the participant. The Fund may exercise all rights and defenses of the participant including:

(1) Appear, defend and appeal claims.

(2) Receive notice of, investigate, adjust, compromise, settle and pay claims.

(3) Investigate, handle and controvert claims.

(f) Should payment of benefits be stayed in bankruptcy court, the Board of trustees or a designated representative shall appear in the bankruptcy court and move to lift the stay.

(g) The Board of trustees shall notify all employees with pending claims of the name, address and telephone number of the party administering and defending against their claim.

(h) The Board has the discretion to direct the Fund to pay, in whole or in part, the contractual fee arrangement between an attorney and a claimant pursuant to § 34-9-108(a). The attorney must apply to the Board and provide notice to the employee with a pending claim. Any party may make an objection to the application and all objections will be considered by the Board.

(i) This code section shall not impair any claims, to the extent those claims are unpaid, in the insolvent self-insurer's bankruptcy by the board of trustees, any employees, or any provider of services related to the insolvent self-insurer's workers' compensation obligations, to the extent those claims remain unpaid. Provider of services includes, but is not limited to, medical providers or the attorneys representing the insolvent self-insurer or the claimant, if the services provided are related to the insolvent self-insurer's workers' compensation obligations.

Note as to revisions. — The revision effective July 1, 2010, substituted "security" for "securities" in paragraphs (d)(2) and (d)(3); in subsection (e), substituted "The fund" for "The Board of trustees" in the first sentence, and substituted "The Fund" for "The Board of trustees" in the second sentence; and substituted "by the board of trustees, any employees, or any provider of services related to the insolvent self-insurer's workers' compensation obligations, to the extent those claims

remain unpaid" for "which have been filed by a provider of services" at the end of the first sentence of subsection (i).

Rule 386. Method of Assessment.

(a)(1) The Board of trustees shall, commencing January 1, 1991, assess each participant in accordance with paragraph (2) of this subsection. Upon reaching a funded level of $10 million, all annual assessments against participants who have paid at least three prior assessments shall cease except as specifically provided in paragraph (4) of this subsection.

(2) Assessment for each new participant in the first calendar year of participation shall be $8,000.00. Thereafter, assessments shall be in accordance with paragraphs (3) and (4) of this subsection.

(3) After the first calendar year of participation, the assessment of each participant shall be made on the basis of a percentage of the total of indemnity benefits paid by, or on behalf of, the participant during the previous calendar year. Except as provided in paragraph (2) of this subsection for the first calendar year of participation and paragraph (4) of this subsection, a participant will be assessed 1.5 percent of the indemnity benefits paid by that participant during the previous calendar year or $2,000.00, whichever is greater. The maximum amount of annual assessments, not including those special assessments provided for in paragraph (4) of this subsection, in any calendar year against any one participant shall be $8,000.00.

(4) If the fund is reduced to an amount below $5 million net of all liabilities as the result of the payment of claims, the administration of claims, or the costs of administration of the Fund, the Board of trustees may levy a special assessment against participants in an amount sufficient to increase the funded level of $5 million net of all liabilities; provided however, that such assessment in any calendar year against any one participant shall not exceed $8,000.00.

(5) Funds obtained by such assessment shall be used only for the purposes set forth in this article and shall be deposited upon receipt by the Board of trustees into the fund. If payment of any assessment made under this article is not made within 30 days of the sending of the notice to the participant, the Board of trustees is authorized to do any or all of the following:

(A) Levy fines or penalties;

(B) Proceed in court for judgment against the participant, including the amount of the assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;

(C) Proceed directly against the security pledged by the participant for the collection of same; or

(D) Seek revocation of the participant's insured status.

(b)(1) The Fund shall be liable for claims arising out of injuries occurring after January 1, 1991; provided, however, no claim may be asserted against the Fund until the funding level has reached $1.5 million.

(2) All participants shall be required to maintain surety bonds or the Board of trustees may, in its discretion, accept any irrevocable letter of credit or other acceptable forms of security in the amount of no less than $250,000.00. In addition, each active participant shall be required to purchase excess insurance for statutory limits with a self-insured retention specified by the Board, and the excess policy shall include the bankruptcy endorsement required by the board and Board of trustees. For participants who are no longer active, security in an amount commensurate with their remaining exposure, as determined by the board, shall be required until all self-insured claims have been closed and all applicable statutes of limitations have run.

(c) A participant who ceases to be a self-insurer shall be liable for any and all assessments made pursuant to this code section for so long as indemnity or medical benefits are paid for claims which originated when the participant was a self-insurer. Assessments of such a participant shall be based on the indemnity benefits paid by the participant during the previous calendar year.

(d) Upon refusal to pay assessments, penalties, or fines to the Fund or upon refusal to comply with a board order increasing security, the Fund may treat the self-insurer as being in default with this Chapter and the self-insurer shall be subject to revocation of its Board authorization to self-insure and forfeiture of its security.

Note as to revisions. — The revision effective July 1, 2010, substituted "$8,000.00" for "$4,000.00" in paragraph (a)(2); in paragraph (a)(3), in the first sentence, substituted "the participant" for "each participant", in the second sentence, deleted "not" preceding "be assessed", deleted "at any one time an amount in excess of" preceding "1.5 percent", and substituted "$2,000.00" for "$1,000.00", and rewrote the last sentence; rewrote paragraph (a)(4) and (a)(5); in paragraph (b)(2), substituted "$250,000.00" for "$100,000.00 until the Board, after consultation with the Board of trustees, has determined that the financial capability of the trust fund and the participant no longer warrants any form of security" at the end of the first sentence, and added the last two sentences; substituted "for so long as indemnity or medical benefits are paid" for "as long as indemnity compensation is paid" in the first sentence; and, in subsection (d), substituted "or upon refusal to comply with a board order increasing security" for "when due", substi-

tuted "default" for "noncompliance" and added "and forfeiture of its security" at the end.

Rule 387. Rights and Obligations of Board of Trustees to Obtain Reimbursement from Participant.

(a) The Board of trustees shall have the right and duty to obtain reimbursement from any participant for compensation obligations in the amount of the participant's compensation obligations assumed by the Board of trustees and paid for claims as well as reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be approved by the Board of trustees.

(b) The Board of trustees shall have the right to use the security deposit of a participant, its excess insurance coverage, and any other guarantee to pay the participant's workers' compensation obligations assumed by the Board of trustees including reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the Board of trustees.

(c) The Board of trustees shall be a party in interest in any action or proceeding to obtain the security deposit of a participant for the payment of the participant's compensation obligations, in any action or proceeding under the participant's excess insurance policy, and in any other action or proceeding to enforce an agreement of any security deposit; or captive or excess insurance carrier; and from any other guarantee to satisfy such obligations. The fund is authorized to file a claim against a bankrupt participant or the participant's agents and seek reimbursement for any payments made by the fund on behalf of the participant pursuant to this chapter. The fund is subrogated to the claim of any employee whose benefits are paid by the fund. Further, the find shall have a lien against any reimbursement payments the participant is entitled to from the Subsequent Injury Trust fund in an amount equal to the payments made by the fund to satisfy the participant's liability for workers' compensation benefits.

Note as to revisions. — The revision effective July 1, 2010, substituted "duty" for "obligation" in the first sentence of subsection (a); in subsection (b), in the first sentence, substituted "insurance coverage, and any other guarantee" for "insurance carrier, and from any other guarantor" near the middle, and substituted "reasonable administrative and legal costs" for "attorneys' fees and legal costs" at the end, and added the last sentence; and added subsection (c).